



STATE BOARD OF EQUALIZATION

April 6, 1995

REDACTED TEXT

Re: REDACTED TEXT

Dear REDACTED TEXT:

This is in response to your letter dated January 24, 1995 regarding the application of tax to fund-raising activities.

You ask whether an organization considered a qualified nonprofit organization as explained in Regulation 1597 may charge its customers tax. You state that the organization purchases items such as sweatshirts at \$15 each plus \$.40 shipping, and pays sales tax (reimbursement) on the \$15 purchase price (\$1.24). The organization wishes to realize \$5 profit, so each sweatshirt is advertised for sale at \$20. At the time of the sale, the organization adds on a \$.40 shipping charge and \$1.24 tax, with the charges itemized as "shipping and tax," for a total sale price of \$21.64.

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, use tax, measured by the sales price of the property sold, applies to the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6201, 6401.)

The general rule is that sales of tangible personal property are presumed to be taxable retail sales. You indicate in your letter that in answering your question, you wish for us to assume that the organization qualifies as a consumer as explained in Regulation 1597, a copy of which is enclosed. Regulation 1597 interprets and explains the provisions of Revenue and Taxation Code sections 6359.3, 6360, 6361, 6361.1, and 6370. If the organization is the consumer and not the retailer, the sales REDACTED TEXT and other vendors make to the organization are taxable, but the sales made by the organization to its customers are not taxable.

Since the organization's sales are not taxable, the organization may not charge its customers an amount designated as tax. Any amount designated by the organization as tax and collected from its customer as tax constitutes excess tax reimbursement, and must be refunded to the customer or paid to the Board. (Reg. 1700(b).)

If you have further questions, please feel free to write again. If you do write again, please send us a hard copy of your inquiry, with a legible return address, without regard to whether you also transmit a copy of your letter by facsimile.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

Enclosure

cc: San Jose District Administrator