

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE**M e m o r a n d u m****505.0377****To :** G. Jung
CH - Compliance**Date:** July 11, 1995**From :** Kelly W. Ching
Staff Counsel**Telephone:** (916) 322-2976
CalNet 492-2976**Subject:** Alameda Officers' Wives' Club
No Permit No.

This is in response to your memorandum dated April 5, 1995 regarding the application of tax to sales made from a gift shop located on a Naval base. You state:

"Mrs. D--- B---, the wife of the NAS Alameda's executive officer, phoned me to ask if the club has a permit and sales tax obligation. They attempt to raise funds for needy service personnel through their 'gift shop' on the base (slated to close Sept. '97.) The entire operation is on base, managed by Navy personnel only. Two possible situations: sales of donated goods from Navy personnel, [and] purchases from the Navy Exchange or California vendors, ex-tax."

With your inquiry, you have enclosed copies of the Alameda Officers' Wives' Club (AOWC) Bylaws, the AOWC Constitution, and a club newsletter.

As you know, 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.) Sales to the United States or its unincorporated agencies and instrumentalities are exempt from tax by statute. (Rev. & Tax. Code § 6381(a), Reg. 1614; see also Rev. & Tax. Code § 6352.) The United States Supreme court has concluded that an entity is an instrumentality exempt from state taxes only when that entity is so closely connected to the federal government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned. (United States v. New Mexico (1981) 455 U.S. 720, 735; see Standard Oil Co. of Cal. v. Johnson (1941) 316 U.S. 481 (post exchanges are operated as arms of federal government and are therefore exempt federal instrumentalities).)

In a case regarding the Air Force Academy Athletic Association (AFAAA), we concluded that in order for that organization to be considered a federal instrumentality, it would have to be an integral part of the Air force, charged with an essential function in the operation of the Air Force, and the degree of supervision by the Air Force would have to be more than casual or perfunctory. The AFAAA charter stated that the organization was established and operated in accordance with federal rules and regulations, that it was identified in a Secretary of the Air Force Memorandum as a special nonappropriated fund instrumentality, that it performed physical education and public relations functions for the Air Force Academy, and that it was subject to the general supervisory process of the Secretary of the Air Force. The immediate control, operation, and supervision of all the AFAAA activities were the responsibility of the Superintendent of the Air Force Academy under the general supervision of the Air Force Chief of Staff. The charter of the AFAAA supported our conclusion that the AFAAA is an unincorporated instrumentality of the United States. (See BTLG Ann. 505.0045 (8/6/90).) In contrast, based on facts provided to us, we do not consider Navy Relief Societies to be agencies or instrumentalities of the United States; therefore, sales to them are not exempt from tax under section 6381. (BTLG Ann. 505.0580 (7/28/53).)

In the present case, nothing in the enclosed AOWC documents states or indicates that AOWC was established or operates under the authority of federal statutes or regulations. Further, as stated in Article III of the AOWC Constitution, the membership of the club consists of spouses of commissioned officers. Article II states that the purpose of the club is to develop the mutual interests of the spouses of officers. The AOWC Constitution and Bylaws make it clear that the immediate control, operation, and supervision of AOWC activities are the responsibility of officers' spouses, not of others acting on behalf of the Navy or Marine Corps in their official capacities.

Since the information provided to us does not indicate that the AOWC is so closely connected to the federal government that the two cannot realistically be considered separate entities, the AOWC fails to qualify as an unincorporated agency or instrumentality of the United States for sales and use tax purposes. This means that sales to the AOWC are not exempt from tax under Revenue and Taxation Code section 6381.

Of course, sales to the AOWC for purposes of resale are not retail sales, and thus are not subject to sales tax. (Rev. & Tax. Code § 6007.) The AOWC owes sales tax on its gift shop's retail sales, for which it may collect reimbursement if the contracts of sale so provide. (Civ. Code § 1656.1.) Every person engaged in business as a seller of tangible personal property in California, including the AOWC, must apply for a California seller's permit. (Rev. & Tax. Code § 6066.)

I note that you mention Regulation 1616 in your memorandum. Regulation 1616 explains that in general, tax applies to the sale or use of tangible personal property upon Federal areas, such as Naval bases, to the same extent that it applies with respect to sale or use elsewhere within the state. Therefore, the fact that the AOWC gift shop is located on base does not affect the analysis set forth above.

If you have further questions, please feel free to write again.

KWC:cl

cc: Oakland District Administrator