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October 29, 1993

Ms. K--- D---  
Director, Government Relations  
American Red Cross (ARC)  
XXXX --- Lane  
---, California XXXXX-XXXX

BURTON W. OLIVER  
*Executive Director*

Re: TK -- XX-XXXXXX

Dear Ms. D---:

It was a pleasure meeting with you at our conference on June 24, 1993. You brought with you Mr. J--- H. M---, Chapter Executive Officer of the --- Area Chapter, and Mr. P--- F. B---, Assistant Chapter Manager of the --- --- Chapter. Also attending from the Legal Division were Tax Counsels John L. Waid and Sukhwinder Dhanda. We discussed the application of sales and use tax to sales by the Red Cross to the public and to its chapters in various situations. For the sake of brevity, I have attached a copy of your letter rather than repeat at length the factual circumstances set forth therein. Throughout this letter, I use the term "Red Cross" to denote both the national organization and its chapters, but differentiate between the two when the context so requires.

**OPINION**

As you note in your letter, the Red Cross has been found to be an incorporated instrumentality of the United States exempt from any sales or use tax imposed directly on it. (Department of Employment v. U.S. (1966) 385 U.S. 355, 358 [87 S.Ct. 464, 17 L.Ed.2d 414].) Sales to the Red Cross, its chapters and branches are exempt from tax. (Rev. & Tax. Code § 6381(c).) However, we have previously determined that it is a retailer required to collect use tax absent a statutory exemption. (Annot. 560.0140. Sales and Use Tax Annotations are excerpts from previous Legal staff opinion letters and serve as a guide to staff positions.)

As we noted in our conversation, these questions have arisen before. Assistant Chief Counsel Donald J. Hennessy, in a letter to Mr. S--- R---, then of the ARC, --- --- Region, dated September 6, 1988, (copy attached) determined that Sections 6408 and 6409, enacted in 1978,

provided the necessary statutory exemption from use tax for ARC's sales to its chapters of first aid and CPR books, emblems, and training kits. As to other kinds of items, Mr. Hennessy stated the rule as follows:

"We note, then, for the future, that the Red Cross would only incur a duty to collect use tax if it regularly engages in selling items not included within Sections 6408 and 6409."

Turning to the specific instances you outline, we conclude as follows:

(1) Health/Safety/Emergency Preparedness Materials. You indicate that the ARC provides health and safety and emergency preparedness training to the people of California. You provide instructional books, pamphlets, disasters kits, and first-aid kits. It also provides devices to prevent the transmission of disease- e.g., face shields, pocket masks, and mouth barriers- as an integral part of CPR training. People buy these items, either as replacements for those originally provided as part of a class, or in the general interest of preparedness.

Section 6409 provides exemptions for the use of health and safety educational materials and insignia "routinely sold in connection with health and safety and first aid classes," sold or purchased by a qualified organization such as the Red Cross. (See, Mr. Hennessy's letter.) We regard the term "in connection with" as much broader than a phrase such as "related to." It does not imply that the purchase or sale of such materials must be made as part and parcel of the classes, which is implied by the latter phrase, but rather that those purchases or sales must be associated with or pertinent to such classes. We conclude that sales of such items made as a direct result of specific Red Cross training and education programs fall within the exemption provided by Section 6409. The use in this state of instruction books and pamphlets, and disaster and first-aid kits, purchased from the Red Cross as a direct result of public health and safety awareness created by particular Red Cross educational efforts are exempt from use tax.

2. Insignia/Recognition Items.

"T-shirts, hats, sweats, jackets, pins, patches, nameplates/tags all bearing the Red Cross emblem, are primarily sold to Red Cross volunteer and paid staff for the express purpose of identification when on a Red Cross assignment."

The Red Cross' customers' purchases of these items were previously determined to be exempt from use tax as long as they bore the Red Cross emblem. (See, Mr. Hennessy's letter; 18 USC 706.)

3. Promotional Items.

"Items such as mugs, ball point pens, ties, scarves, backpacks, watches, key chains, greeting cards special event T-shirts such as CPR Saturday (again all bearing the ARC emblem) are frequently purchased by the chapter for the purpose

of recognizing a volunteer. They may also, however, be made available for purchase in some chapters as a promotional item."

As noted above, customers' purchases of these items from the Red Cross are exempt from use tax so long as the items bear the Red Cross emblem.

4. Auctions/Fundraising Events.

"In these recessionary times, creativity in fundraising is a persistent challenge. Some chapters of the American Red Cross may be involved in fundraising auctions. Sometimes these are held on out behalf by someone else on non-Red Cross property; sometimes these events are held at the Chapter; or sometime there may be a combination of these two situations. The items are donated to the organization with the understanding by the donor (with the donor taking a deduction for charitable purposes) that the item will be auctioned off to the highest bidder with the proceeds of said auction benefitting the humanitarian work of the American Red Cross, are these auction sales subject to the collection of use tax? Would a more regularly held event change your interpretation of these sales?

"If Red Cross merchandise were made available at these events, would these auction sales be subject to the collection of use tax?

As noted above, purchases of items bearing the Red Cross emblem from the Red Cross are not subject to use tax under Section 6409. This exemption does not extend, however, to other items which the Red Cross may sell, especially items donated with the intent that they be sold to raise money. Sales for the purpose of fund raising do not qualify for the general exemption for sales by charitable organizations (§ 6375); the Red Cross must collect use tax on its customers' purchases of such donated items at such sales. The frequency with which fundraising events are held do not affect the availability of the exemption.

5. Special Events.

"American Red Cross chapters are asked to participate in special events like health fairs and community events for the express purpose of building health and safety awareness by providing health and safety information, materials, and recognition items, often for sale. Increasingly chapters have been asked to provide evidence of a seller's permit or proof of exemption from such regulation in order to participate in the event. ... It is necessary to acquire a permit for the aforementioned purpose?

The import of the previous paragraphs is that, as long as the chapter sells items a type that regularly bears the Red Cross emblem- e.g., T-shirts, pencils, jackets, etc.- it need not have a seller's permit to sell such items. Your letter indicates that the bulk of sales are in fact items

containing the Red Cross emblem. If that is the case, then the chapters are not required to possess a seller's permit on a continuing basis. However, when selling donated items and items that are not of a type to normally bear the Red Cross emblem (i.e., a chapter can't put the emblem on a donated car in order to try to get the exemption) at auctions and fundraising events, the chapter must obtain a temporary permit for that event. If the chapter participates in a large number of these events during the year, it may be more efficient for it to and get a Seller's Permit rather than many temporary permits. If the chapter sells a combination of taxable and exempt items, it still must get the temporary permit, but need collect use tax only on its customers' taxable purchases.

6. Vendors sell health and safety items, promotional items, clothing, books, insignia items, etc. to the Red Cross which resells some and gives some away. You indicate that vendors have requested a seller's permit number at the time of purchase, presumably as part of accepting a resale certificate. You further indicate that apparently the Red Cross' suppliers are concerned about whether or not a use tax may apply on its resale of these items to third parties. A Red Cross entity may buy items free of tax for resale by issuing resale certificates to its vendors (§ 6092) whether or not the entity's re-sale of the item is subject to use tax. As long as the vendor accepts the resale certificate in good faith, it is relieved from the duty to report and pay sales tax on the transaction. As noted above, Red Cross entities do not need to have Seller's Permits on a continuing basis. If the particular Red Cross entity does not have a permit, it must state on the resale certificate why it does not have one- e.g., it only sells exempt items- on the certificate. (Reg. 1668(b)(1)(C).)

7. Mission-related Items. You ask for clarification on the application of use tax to the sale of mission-related versus non-mission-related items. The materials listed in Paragraphs 1-3 are considered "mission-related" for sales and use tax purposes. Those listed in Paragraph 4 are not. The tax consequences of the Red Cross' sales of such items were discussed therein.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid  
Tax Counsel

JLW:es

Attachs.

cc: Mr. Gary J. Jugum