

**STATE BOARD OF EQUALIZATION**

(916) 445-3723

July 22, 1980

Mr. [S]
Attorney at Law
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Dear Mr. [S]:

This is in response to your letter of July 17, 1980, which was addressed to Mr. James J. Delaney. Your letter was referred to the undersigned for reply.

The California sales tax is an excise tax, the legal incidence of which falls upon the retailer of tangible personal property. Thus even if churches and religious organizations were exempt from such a tax, tax would nevertheless apply to a sale of tangible personal property to these organizations (absent a provision expressly exempting such transactions from the tax). That is, the sales tax is on the seller, and any exemption for the buyer does not benefit the seller.

It is our opinion, however, that sales and use taxes may legally be imposed upon churches and religious organizations. Thus, where churches and religious organizations purchase tangible personal property from out-of-state sellers for use in this state, the churches and religious organizations are required to pay use tax. The use tax is an excise tax and not a property tax, and therefore the provisions of Article XIII of the State Constitution have no application with respect to it. Douglas Aircraft Co., Inc. v. Johnson, 13 Cal. 2d 545.

It has been the position of the Board that the sales tax applies to churches and religious organizations since the inception of the tax in 1933 and that the use tax applies to such organizations since the inception of that tax in 1935.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

cc: Mr. J. J. Delaney