

Memorandum

165.0096.800

To : Mr. Patrick Farish
Compliance Planning and Evaluation

Date: June 25, 1997

From : David H. Levine
Supervising Tax Counsel

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Subject: S--- O--- C--- Y---

This is in response to your memorandum dated June 11, 1997 which is a follow up to previous correspondence between us regarding the application of Revenue and Taxation Code section 6375. Your further explanation, which is very helpful in my understanding as to the issues involved, is as follows:

“Section 6375 requires qualifying organizations to make, prepare, assemble or manufacture the items that they donate as a matter of assistance to the donees. Regulation 1570 explains what constitutes assembly and preparation. The difference we see in the two groups is that the toothbrushes, tooth paste, clothing and some medications are assembled into a package by the Y--- and given to the donees when they arrive at the Y---. The paper goods (paper plates, napkins, etc.) are made available to the residents to use when they prepare their own meals at the facility. The over-the-counter medications are in a basket on the counter for residents to take as needed.

“I realize that assembly only requires bringing items to a location for donation but it isn't clear in our mind as to when an item is being consumed (used) by the organization and when it is being donated. Regulation 1570 (c) (1) states that tax applies to sales to an organization of supplies such as tools, office supplies and other articles not otherwise exempt. Paper plates and napkins provided by the organization for residents to use seem to be items consumed, like toilet paper. Other organizations have requested exemption from the tax on items used by children at day care centers, dental supplies used in treating patient donees or dish soap provided at care facilities. We have always determined these items to be taxable as items consumed by the organization in providing their service.

“The number of organizations that request exemption is increasing. Most of the organizations are donating and are not selling. They all feel their purchases should be nontaxable. Many are packaging the donations into kits that are handed out. Teddy bears and

essentials kits are given to children and rape victims by police on behalf of Assistance Leagues. If the definition of 'assembled' and 'prepared' can include any tangible personal property provided to a donee, then we may need to revisit our approach to the requests we receive. Most applicants clearly meet the first three conditions in Regulation 1570. It's determining whether the fourth condition is met that we are having a problem with."

As you note, our requirements for regarding the group as "assembling" property to be donated is lenient. It seems that if the nonprofit group has to go somewhere to pick up the property, subdivision (a)(4)(D) of Regulation 1570 would regard that as "assembled" for purposes of the exemption. This seems to cover virtually any situation where the nonprofit group has to go out in the world and purchase ("assemble") the property it wishes to donate. Thus, to restate what I understand to be the key issue in this particular inquiry: does the nonprofit group donate the items in question to its clientele, or does the nonprofit group otherwise consume the property in providing its services? Since you have already determined that the nonprofit group satisfies the other three requirements for exemption and the purchasing seems to satisfy one-half of condition four, if it donates the property the other half of the fourth condition is satisfied and no tax applies to the group's purchases. However, if the group is regarded as consuming the property in any other manner, tax applies when it purchases the property.

You regard the Y--- as meeting the conditions for exemption when it assembles goods into a kit that it gives to donees when they arrive at the Y---. The kit could include some medications. I assume the medications left in a basket are individual pills or otherwise separate doses of medication. It does not appear to me that such individual medications left in a basket for the residents to take as needed should be treated differently for purposes of section 6375. It seems that the intent is to donate individual medications to residents on an as-needed basis for their consumption. I believe that medications taken by the residents from the basket are donated to those residents.

The paper goods are a more difficult issue. I assume that you regard the food items being served as coming within the section 6375 exemption (which is probably only relevant with respect to the Y---'s purchases not coming within section 6359, such as purchases of soft drinks). If the paper goods were combined in a "to go" container that was removed from the premises, it seems that they too would fall within the section 6375 exemption. However, when they are used for food service on site as a substitute for more permanent dishware (that would have to be washed and stored), it seems to me that we should treat them the same as the items they replace. That is, I believe we should not regard the Y--- as donating such items, but rather as otherwise using the items to provide its services, which includes the providing of the food facilities in which the Y--- uses the paper products.

You indicate that you have always treated dental supplies used in treating patients and soap provided at care facilities as not being donated within the meaning of section 6375. I agree that the supplies used by a dentist are not donated for purposes of section 6375 but rather are otherwise consumed by the organization to provide services. On the other hand, if the organization gives a tube of toothpaste, floss, and a toothbrush to the patient for the patient's

later use, I believe that would be a donation for purposes of section 6375. I am not sure what you mean be dish soap. If it is a separate container or bar of soap given by the organization, I believe it is a donation for purposes of section 6375. However, if it is a communal situation (e.g., the bar of soap in the bathroom, or a bottle of dish soap in the kitchen that someone can use to clean their own dishes), I believe that the organization is not donating such items for purposes of section 6375 but rather is otherwise consuming such items in performing its services.

Since we will be meeting this Friday on a related subject, we can discuss the contents of this memorandum at that time if further discussion is necessary.

DHL/cmm

cc: Mr. Dennis Fox (MIC:92)
Ms. Rachel Carnes (MIC:44)
Mr. Gary J. Jugum (MIC:82)