



STATE BOARD OF EQUALIZATION

June 25, 1971

[A]
XXX --- ---
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Attention: [X]
 Chairman

Ladies:

Reference is made to the March 15, 1971 preliminary hearing regarding the May 7, 1970 petition for redetermination which you filed with respect to tax assessed for the period January 1, 1969 to December 31, 1969. At the hearing questioned the taxability of receipts received from your thrift shop sales. It was your position that in operating the thrift shop, you met all of the requirements of sales and use tax ruling No. 40 such that your thrift shop sales were exempt from sales tax under Sales and Use Tax Law section 6375. In this regard, you referred to a March 4, 1964 letter from Tax Counsel Stetson wherein he advised that your thrift shop operation fell within the exemption provided for in section 6375 and that your thrift shop sales made at [Y], would be considered exempt from sales tax as long as the circumstances existing at the time remained unchanged. Except for the fact that the thrift shop was subsequently relocated nearby at [Z], you advised that the thrift shop operation was conducted in the same manner in 1969 as it was in 1964 and as it is now in 1971.

As you know, ruling 40 sets forth the requirements which must be met in order for sales by a charitable organization to be exempt from sales tax under section 6375. The first requirement of the ruling is that the organization must be formed and operated for charitable purposes and must qualify for the "welfare exemption" from property taxation provided by section 214 of the Revenue and Taxation Code. The latter portion of this requirement has been interpreted to mean that the organization must receive the welfare exemption from the County Assessor on the retail location for which the seller's permit is held. As you did not receive a welfare exemption from the County Assessor for your thrift shop in 1969, we have no alternative but to conclude that the first requirement of ruling 40 was not met and that your 1969 thrift shop sales were not exempt from sales tax under section 6375.

In addition, it has been our position that property used to raise funds should not receive the benefit of the welfare exemption when the funds are raised for donation, when the funds are devoted to disconnected charitable purposes. Rather, only when the activity which makes the sales necessary is itself charitable and when the funds are reinvested in that charitable activity, only when the funds are for the relief of poverty and distress, does the exemption apply. With respect to the thrift shop, you advised that net income from thrift shop sales was not reinvested in the operation of the thrift shop but that it was used to purchase medical supplies

and equipment for the medical center and for needy patients, and to reimburse expenses incurred by needy patients. Thus, as the net income from the thrift shop sales was devoted to a disconnected charitable purpose, the use of the property was not a use in a charitable activity that would permit the exemption.

For your information, the board has reiterated these conditions which must exist in order for the first requirement of ruling 40 to be met in paragraphs 1, 2, and 3 of subsection (a) of regulation 1570, ruling 40's successor, copy enclosed.

Finally, subsequent to Tax Counsel Stetson's March 14, 1964 letter, reference to which has been made, by letter dated February 21, 1969, you were advised that since our records did not indicate that you had been granted an exemption under section 214 for your thrift shop, you should immediately commence collecting sales tax on all thrift shop retail sales, report such sales on your tax returns as taxable sales and pay tax thereon. In effect, that letter superseded the March 14, 1964 letter. As of that date, you could have applied for an exemption for your thrift shop on or before March 15, 1969, or you could have begun to collect sales tax on all your thrift shop retail sales, etc. As you did neither, the determination for the year 1969 was issued. We have concluded that the determination was properly issued as to sales tax incurred as the result of thrift shop sales made between February 21, 1969 and December 31, 1969. In view of the 1964 letter, however, we have concluded that the determination should not have included sales tax incurred as the result of thrift shop sales made between January 1, 1969 and February 20, 1969, and we are recommending that that sales tax be deleted.

Accordingly, it will be our recommendation to the board that the remaining sales tax be redetermined without adjustment. If we do not hear from you within 30 days from the date of this letter, we shall presume that you concur in our recommendation, and we shall present the matter to the board for final action. In this event you will receive official notice of the board's action in due course. In the event that you do not concur in our recommendation and you desire a hearing before the board, please notify Mr. J. L. Martin, P.O. Box 1799, Sacramento, CA 95808, of this fact within the 30-day period and he will inform you of the time and place of hearing.

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM:smb
Enclosure

cc: [A]
Attorney at Law

[A]

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June 25, 1971
165.0160

bc: Los Angeles Dist. – Dist. Admin.
West Los Angeles – Subdist. Admin.

Attached are two copies of hearing report dated 6-24-71 which have been reviewed.