



**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)  
450 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)  
Telephone: (916) 324-2637  
FAX: (916) 323-3387

JOHAN KLEHS  
First District, Hayward

DEAN ANDAL  
Second District, Stockton

ERNEST J. DRONENBURG, JR.  
Third District, San Diego

BRAD SHERMAN  
Fourth District, Los Angeles

KATHLEEN CONNELL  
*Controller, Sacramento*

August 17, 1995

BURTON W. OLIVER  
*Executive Director*

Mr. --- A. B---  
--- & ---  
XXX --- ---, Suite XXXX  
--- ---, CA XXXXX

Re: Unidentified Taxpayer;  
Prepaid Telephone Cards

Dear Mr. B---s:

This is in response to your July 19, 1995 letter to Assistant Chief Counsel Gary Jugum regarding the application of tax on prepaid telephone cards.

You state:

“We represent a for-profit business entity that provides consulting services and business products to various customers. The business proposes to retain various consultants who would seek out and find other entities that would be interested in promoting the prepaid phone card in various promotional ways. For example, the consultant could arrange with a membership organization to have the membership organization solicit its ongoing members, or potential new members, to pay membership dues each year. In return for paying a certain level of dues, for example \$100, the member would receive a \$20 prepaid telephone card. The prepaid telephone card can be printed with the logo or special message of the sponsoring organization. In another example, a candidate running for office could have his or her committee solicit potential contributors for contributions and, in return for receiving a contribution of \$100 or more, return a prepaid telephone card worth \$20 to the contributor. The card could have the photograph and slogan of the candidate on it.

“....

“Our for-profit business entity would receive a commission on each prepaid telephone card that would be distributed to potential members or contributors of a particular entity.”

You ask:

“Is this type of transaction subject to sales tax, either when the cards are purchased from the telephone service that may be selling in such cards, or when the cards are distributed to potential members or contributors upon receipt of a payment from them?”

#### Discussion

California imposes a sales tax on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is exempt from taxation by statute. (Rev. & Tax. Code § 6051.) This tax is imposed on the retailer who may collect reimbursement from the customer if the contract of sale so provides. (Civ. Code § 1656.1.) When sales tax does not apply, use tax is imposed on the sales price of property purchased from a retailer for the storage, use, or other consumption of that property in California. (Rev. & Tax. Code §§ 6201, 6401.)

We do not consider sales of debit cards to be sales of tangible personal property within the meaning of the Sales and Use Tax Law. Instead, the debit cards are indicia of their prepaid value. The owner of the card acquires the card as a token of value. (See e.g., Business Taxes Law Guide Annot. 280.0580 (1/25/61) (a gift certificate is evidence of an intangible right and is not subject to tax).) The sale or use of a phone debit card as an indicia of its prepaid value is not subject to sales or use tax. (Generally, the person who first sells the card as an indicia of its prepaid value would be the consumer of the card, and sales or use tax would apply to the sale of the card to that person.) Thus, no sales or use tax is due based on the sale of such a debit card to your client or upon distribution of the cards to potential members or contributors upon receipt of payment from them.

Please note that there may be other taxes or surcharges (unrelated to sales or use taxes) imposed with respect to the telephone service provided in connection with the debit card. In that regard, I enclose a copy of the Emergency Telephone Users Surcharge Law. If you have any questions regarding the application of that surcharge, you may direct your inquiry to Mr. Lawrence A. Augusta, Assistant Chief Counsel, State Board of Equalization, 450 N Street MIC:82, P. O. Box 942879, Sacramento, CA 94279-0082, Telephone: (916) 445-6493. The California Public Utilities Commission may also administer taxes imposed with respect to such telephone service. You may contact the PUC at 505 Van Ness Avenue, San Francisco, CA 94102-3298, Telephone: (415) 703-1282. In addition, local jurisdictions may also impose taxes or fees with respect to such services.

Mr. P--- A. B---

-3-

August 17, 1995  
280.0777

If you have further questions regarding the application of the Sales and Use Tax Law, feel free to write again.

Sincerely,

Warren L. Astleford  
Staff Counsel

WLA:cl

Enclosure

cc: --- --- District Administrator