

**M e m o r a n d u m****295.0330**

To: Torrance – Auditing (RLR)

Date: May 6, 1986

From: Headquarters – Legal (RLD)

Subject: [A]

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This is in reply to your March 18, 1986 memorandum regarding the proper measure of tax for sales of premiums by [A] in exchange for classes or sales parties provided by hostesses. You provided the following explanation:

[A]’s brochure (attached) pictorializes to the hostess the merchandise that can be earned under the various premium awarding categories. Each item of merchandise has a dollar value printed under its picture. The majority of the premiums are also available for purchase through the customer catalogue at the same amount as the premium is valued to the hostess. There is no other written or oral agreement between the parties regarding the valuation of the premium. As we understand, the sales representative earns an average 35% commission on all orders taken and that the direct costs (direct labor, materials, overhead) of all items given to the hostess is approximately 15% of the stated value.”

As you know, the sales tax is measured by the gross receipts of the sale. “Gross receipts” is defined at section 6012, Revenue and Taxation Code, as the total amount of the sale price of the retail sales of retailers, valued in money, whether received in money or otherwise. Here, of course, the sale price is received by [A] in the form of services performed by the hostess, and we must value the services in money.

Although the case Hawley v. Johnson, 55 Cal.App.2d 232, involves the valuation, for sales tax purposes, of property traded in on property sold at retail, we believe the case provides guidance in determining the value of the services in this case. In Hawley, the court held that, where parties by bonafide agreement valued a trade-in vehicle in money, the parties fixed the measure of tax at that amount. The court went on to state that , “To make market value rather than agreed value the measure would create almost insuperable administrative difficulties, since the taxing power would be compelled in every transaction to look behind the agreed value and ascertain the actual market value of the property traded in. In the give and take of the market place the value arrived at by the free negotiation of the parties may safely be relied upon to furnish a reasonable measure of the value in money of property traded in.”

In this case, of course, the measure of tax is the value of the services performed by the hostess in exchange for the various items sold by the [A] to the hostess. As you noted, the premium catalog which [A] provides to prospective hostesses lists the various premiums available to the hostess for giving classes, and the catalog designates a dollar value for each premium. The catalog value generally equates to [A]'s retail selling price of the product. Absent any express agreement as to the value of the services provided by the hostess, we believe that the stated values of the premiums represent the value of the services as arrived by the free negotiation of the parties, and the Board should be able to rely upon the value as the gross receipts of the sales of the premiums.

RLD:sr