

Memorandum

295.0572

To : Mr. Ramon J. Hirsig, Supervisor
Audit Evaluation and Planning Section

Date: April 23, 1993

From : Elizabeth Abreu
Tax Counsel

(916) 324-8208

Subject: Sales by Publicly Supported Television Stations

This is in response to your memorandum dated February 18, 1993, in which you state:

"The area which we are having difficulty with concerns those situations where the requested donation amount is much greater than the actual fair retail value of the tangible personal property being given for the donation. For example, K--- (a [public] television station) offers a collector's coffee mug with the stations' logo for a donation of \$200. The fair retail value of the coffee mug is \$10. Using Annotation 495.0370, K--- would be considered the retailer of the coffee mug and tax would apply to the donation amount of \$200. We believe a more reasonable approach would be to tax the fair retail value of the coffee mug if it is 10 percent or more of the donation amount. If the fair retail value of the coffee mug is 10 percent or less (deminimus) of the donation amount, then K--- would be considered the consumer of the coffee mug."

We agree with you that the measure of tax should not be the \$200.00 since clearly a greater portion of this amount was intended to be a donation to a publicly supported television station. This conclusion is supported by two annotations, the memorandums you attached for our review, and Regulation 1670(c).

Annotation 495.0370 provides that religious pamphlets and tapes supplied to the public for a suggested minimum donation are regarded as being sold for sales and use tax purpose. The backup letter to this annotation states that tax will be measured by the price or minimum donation requested.

Annotation 295.0280 has a similar provision which was applied to a school which mailed greeting cards to prospective customers and requested \$1.00 or whatever the customer could afford for the greeting cards. The staff concluded that the measure of tax was \$1.00 or the amount actually paid, whichever was less. Any amount remitted in excess \$1.00 was regarded as a nontaxable contribution.

The two memorandums you attached discuss the N--- V--- wine auction and the K---2 food and beverage tasting events. The memorandums conclude that where the price of a ticket to an event includes a meal, drink, or other taxable property and the price is a reasonable price in relation to the retail value of the meal, drink, or other property, the measure of tax is the full price of the ticket. Where there is a significant disparity, however, between the price and the retail value of the property received, only part of the price will be included in the measure of tax.

Finally, these transactions are analogous to premiums delivered with goods sold. Regulation 1670(c) provides that when a premium is delivered along with a food product for human consumption or other exempt item, tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the retailer in the absence of any evidence that the retailer is receiving a larger sum. If there is no such evidence and if sales tax or use tax has been paid, measured by the sale price of the premiums to the retailer, no further tax is due.

We thus conclude that when (1) a viewer makes a contribution to a nonprofit, publicly supported television station and receives tangible personal property upon making the contribution, (2) the primary purpose of the contribution is to make a donation to support the television station, and (3) there is a significant disparity between the amount of the contribution and the retail value of the property received in connection with the contribution, there is a sale of tangible personal property, but the measure of tax is the sale price of the property to the television station. If the television station has paid sales tax reimbursement or use tax on its purchase of the property, no further tax is due.

EA:cl