

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

295.1005

| | | |
|----------------------------|---|--------------------------------|
| In the Matter of the Claim |) | |
| for Refund Under the |) | DECISION AND RECOMMENDATION |
| Sales and Use Tax Law of: |) | OF HEARING OFFICER |
| |) | |
| |) | |
| A--- S---, --- |) | |
| |) | Account No SR -- XX XXXXXX-001 |
| <u>Claimant</u> |) | |

The above entitled matter came on regularly for hearing on Thursday, September 20, 19XX in Inglewood, California. James E. Mahler, Hearing Officer

Appearing for Claimant: Mr. J--- W---
Attorney at Law

Mr. J--- R---
Finance Director

Appearing for the Board: Mr. Jan Ishii
District Principal Auditor

Claim

Claimant seeks a refund of sales tax in the amount of \$XX,XXX for the years 19XX and 19XY.

Contention

The Spring Bonus Program is a cash discount program rather than a patronage dividend program.

Summary

Claimant is a nonprofit unincorporated association which operates the Student's Store near the campus of the --- of --- at --- --- (U---). The Student's Store sells a wide variety of merchandise to the general public as well as to U--- students, faculty and alumni.

In 19XX and 19XY claimant adopted a promotional device called the Spring Bonus Program. The program was initiated in March of each year by heavy advertising in a campus newspaper, the U---. B---. Under the program, all customers who made purchases during a designated period received specially colored cash register receipts. At the end of the program period the customer could return the receipts to claimant. Claimant would then refund to the customer a

predetermined percentage of the total purchases on the receipts, including sales tax reimbursement.

According to claimant, total sales during the 19XX program period were \$X,XXX,XXX. Customers claimed refunds on sales of \$XXX,XXX including tax reimbursement, and \$XX,XXX was refunded. In the 19XY program period total sales were \$X,XXX,XXX, refunds were claimed on sales of \$XXX,XXX, and \$XXX,XXX was refunded.

Analysis and Conclusions

Revenue and Taxation Code Section 6012 defines "gross receipts", the measure of sales tax, as the total amount of the sales price. However, subdivision (c)(1) of that section authorizes a deduction from gross receipts for "cash discounts allowed and taken on sales".

The Board has previously ruled that "patronage dividends" given by a retailer cooperative to its members under Corporations Code Section 12805 are not deductible from gross receipts. (Annotation 295.0960.) The theory is that such dividends are not "cash discounts" but are simply a distributions of surplus earnings.

In this case, claimant gave a refund to any customer who submitted the proper cash register receipts, regardless of whether or not the customer was a member of the cooperative. Therefore, the refunds were not "patronage dividends" under Corporations Code Section 12805, but instead qualify as cash discounts. Claimant is accordingly entitled to a refund of sales tax.

However, it will be necessary to have an auditor examine claimant's records to verify the amount of the refund. It appears that claimant made some nontaxable sales and a refund can be allowed only to the extent the discounts related to taxable sales.

Recommendation

--- --- --- is to initiate an audit to verify the amount of the refund. Grant the refund claim to the extent it is verified.

James E. Mahler, Hearing Officer

12/31/79

Date

Reviewed for Audit:

Principal Tax Auditor

Date