



STATE BOARD OF EQUALIZATION

April 22, 1993

Dear

You requested a ruling from the State Board of Equalization as to whether the --- --- needs a sales tax permit.

You described your organization as a nonprofit 501(c) (3) organization which provides services to people with HIV/AIDS and their families. You intend to rent medical beds and equipment to these unfortunate people. Beds and medical equipment including wheelchairs, walkers, crutches, etc., have been donated to --- and are stored in garages throughout Contra Costa County.

In your opinion, --- will not be "selling" any products, merely "renting" beds and equipment. You asked if use tax applies to the rentals of the beds and equipment if they are all donations to the organization.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes a tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state.

A "sale" means and includes any lease of tangible personal property in any manner or by any means whatsoever. (Rev. & Tax Code § 6006 (g).)

The use tax is a companion tax to the sales tax and is imposed upon every person storing, using, or otherwise consuming tangible personal property purchased from a retailer. The retailer, if engaged in business in this state, must collect the use tax. (Rev. & Tax. Code §§ 6201 et seq.)

Contrary to common belief, there is no general exemption from sales and use tax on sales made by nonprofit organizations. There are exceptions to the tax due on a "lease," one of which is for tangible personal property to be leased in substantially the same form as acquired by the lessor, and for which the lessor has paid sales tax reimbursement (when acquiring the property) or has paid use tax measured by the purchase price of the property.

In your situation, the exception will not apply, since the equipment and beds are donated to the organization. Pursuant to Revenue and Taxation Code Section 6403, the

storage, use or other consumption in this state of property donated by any seller to any organization described in Section 170 (b) (1) (A) of the Internal Revenue Code and located in California is exempt from the use tax.

A seller cannot purchase property for resale when its intent is for donate. This exemption applies, e.g., when a donation is made out of legitimate resale inventory. DHL 3/20/98

Therefore, there is no use tax on the acquisition of the property, but use tax is due based upon the rental receipts of the beds and equipment leased by you to your customer.

Business Taxes Regulation 1591(k) does exempt from tax for sales, including leases that are sales, wheelchairs, crutches, canes, quad canes, and walkers, if the devices are sold [or leased] for the personal use of an individual as directed by a licensed physician.

I wish I could provide a more favorable response to you. The worthwhile function of the --- is highly commendable and is one which I personally believe is needed. However, it is clear that the --- must have a sales tax permit and must collect and remit use tax based on the rental receipts of the beds and equipment.

I have enclosed a copy of Pamphlet 18, Tax Tips for Volunteer and Nonprofit Fund-Raising Organizations, that may be helpful to you.

Very truly yours,

Gordon P. Adelman
Senior Tax Counsel

GPA: sr

Enc.

cc: Oakland District Administrator