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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

LEGAL DIVISION

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November 6, 1996

E. L. SORENSEN, JR.
Executive Director

REDACTED TEXT

REDACTED TEXT

Dear REDACTED TEXT:

This is in reply to your July 29, 1996 letter regarding the application of sales tax to sales by REDACTED TEXT under the following facts you provided:

“We are in the business of fund raising sales. We provide nonprofit organizations, primarily Parent Teacher Associations (‘PTA’), with merchandise that they resell as part of their fund raising activities. It is the typical fund raising program where the PTA contracts with us for the program. We have an agreement with the PTA that they are purchasing the property for resale as part of their fund raising program. We agree to provide the PTA with sales brochures and materials, an optional incentive program that awards prizes to the students that participate, and the product. . . .”

You go on to note that, since the PTA is considered the consumers of the products you sell to them, you collect tax reimbursement on the price you charge to the PTA for the program. You consider sales of food products as exempt. In the past, you have used generic brochures which have been furnished by the companies which supply you with your product. Your name has not been listed on either the brochures or sales materials used by the PTA. Recently, however, you have developed a specific marketing plan that will capitalize on a unique trade name and logo you have registered for your use. That will enable you to establish a better name identification with your PTA customers. While the forms provide for the PTA or similar organization to be prominently listed on the order form used by its student members, you will be including your trade name and logo on the sales brochures and at least your logo on the sales order form that will be used by the PTA’s members.

You believe the marketing plan that you assist the PTA to develop will still emphasize that the sale is being made by the organization, not your company. However, if you are

successful in marketing your new name and logo, you will encourage the PTA to also stress that the product is being provided to the PTA by your company.

Given this information, you asked for our opinion as to whether your placing your company's name and logo on the sales brochures and order forms would result in the State Board of Equalization considering the PTA or equivalent organization as not soliciting orders from the public in its own name for purposes of Sales and Use Tax Regulation 1597, subdivision (h), which provides:

"A nonprofit organization is treated as a consumer of tangible personal property it may sell under circumstances described in subdivisions (d),(e) and (f) of this regulation. In other cases, a nonprofit organization is regarded as a retailer of property it sells to consumers, or it is regarded as an agent of the companies which furnish the property to it for delivery to consumers.

"When a nonprofit organization solicits orders, collects payments, and distributes tangible personal property for a supplier, it is considered to be the agent of that supplier. Accordingly, the supplier, not the organization, is the retailer of the merchandise sold. This is true unless documentation establishes that the nonprofit organization is buying and selling for its own account. The nonprofit organization is presumed to be buying and selling on its own account if all of the following factors are present: 1) the organization solicits the orders from the public in its own name; 2) the organization collects the sale price from the customer in its own name; 3) the organization is responsible for and pays the supplier for the merchandise; and 4) the contract between the organization and the supplier clearly identifies the fact the organization will purchase and resell the products to its customer. If it is selling for its own account, the nonprofit organization will be required to obtain a permit and will be considered the retailer, unless the supplier has been classified by the Board as a retailer under Revenue and Taxation Code Section 6015, or the nonprofit organization is classified under subdivisions (d), (e) and (f) of this regulation.

"If the supplier is a 6015 retailer, the supplier must pay the tax and the organization does not need a seller's permit. The measure of tax is the amount charged to the consumer. When this price is unknown by the supplier, tax will apply to the suggested retail selling price. If the nonprofit organization is classified as a consumer under subdivisions (d), (e) and (f) of this regulation, the supplier will calculate tax measured by the selling price to the nonprofit organization."

Under Regulation 1597, subdivision (f), PTAs and equivalent organizations are classified as consumers. If REDACTED TEXT makes sales to the PTA or equivalent organization (PTA, herein), which, in turn, sells on its own account, REDACTED TEXT's sales tax liability is measured by the gross receipts of its sale to the PTA. On the other hand, if the PTA acts an agent making sales on behalf of REDACTED TEXT, the sales tax liability of REDACTED TEXT is measured by the gross receipts of the sales to the ultimate purchasers.

Based on the information you have provided, the mere presence of REDACTED TEXT's trade name and logo on the sales brochures and the logo on the sales forms would not cause the PTA to be merely an agent for REDACTED TEXT provided the sales brochures and sales forms clearly show the PTA solicits the orders from the customers and collects the sale price from the customers in its own name.

We hope this answers your question; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

cc: Oakland District Administrator - CH