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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Director

April 25, 1996

REDACTED TEXT

Re: REDACTED TEXT

Dear Mr. REDACTED TEXT:

This is in response to your letter dated February 13, 1996 to Supervising Staff Counsel David Levine regarding the application of tax to your client's sales of giftwrap and related items to parent-teacher associations. You state:

"As you recall, I previously contacted you on behalf of my client with respect to advice from the State Board of Equalization setting forth the manner in which my client should do business to comply with the California Sales and Use Tax Law. We appreciate your response and have now incorporated the same in our materials for 1996. However, it is now our desire to request the same information utilizing my client's name for purposes of Section 6596. For ease of understanding, enclosed please find my letter in addition to your response, the details of which are incorporated herein by this reference.

"For purposes of the 1996 REDACTED TEXT Sign-Up Agreement, we have utilized the exact wording that you suggested in your correspondence.

"Additionally, you will note on the back cover of the catalog, an area for the name of the school as well as instructions on the top of the order form instructing the individuals to write the school name on the back cover.

"In light of the material contained herein as well as the previous correspondence, we would appreciate your written response to our request for advice that our agreement and brochure meet the requirements of Regulation 1597 and applicable laws and that REDACTED TEXXT would have no resulting sales/use tax liability."

You have enclosed a REDACTED TEXT catalog of products, and a copy of the "1996 Sign-Up Agreement."

In your previous letter, dated October 4, 1995, in which you do not identify your client, you state:

“The client would be selling gift wrap, gift wrapping accessories (decorative ribbon, tissue and gift bags) and gift items (candles, coffee mugs and cookies and decorative tins) to non-profit, qualified Parent-Teacher Associations (‘PTA’s’).

“The company would provide the PTA with a brochure of its products (with order form attached) that identifies the products by trade name only. The brochure would be pre-priced as requested by the PTA.

“The PTA would solicit orders in its own name....The company name would only appear as a trade name on the brochure.

“The PTA would collect the sales price from its customers in its own name since all checks must be made payable to the PTA. My client would not accept any payment from a customer of the PTA....

“In my initial review of this matter, it is my belief that the company would only need to charge tax on the price that the company charges its PTA customer and not on the price that the PTA charges its customers....”

DISCUSSION

As you know, retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) A retailer may collect reimbursement from its purchaser when the contract of sale provides for such reimbursement. (Civ. Code § 1656.1.) When sales tax does not apply, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use, or other consumption in California, unless specifically exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Nonprofit parent-teacher associations chartered by the California Congress of Parents, Teachers, and Students, Incorporated, and equivalent organizations performing the same type of service for public or private schools and authorized to operate within the school by the governing authority of the school are consumers and not retailers of any tangible personal property sold by them if the profits from such sales are used exclusively in the furtherance of the purposes of the organization. (Rev. & Tax. Code § 6370; Reg. 1597(f).)

We assume for purposes of this opinion that the PTA’s about which you ask qualify as consumers under section 6370 and Regulation 1597(f). An organization such as a PTA may buy and sell for its own account, or it may act as an agent. A PTA will be regarded as your client’s agent if it is selling products on your client’s behalf rather than its own behalf.

When a PTA or other organization solicits orders, collects payments, and distributes tangible personal property for a supplier, it is considered to be the agent of that supplier. (Reg. 1597(h).) If so, the supplier, not the organization, is regarded as selling the property to the consumer and thus is the retailer of the merchandise sold. (See Scholastic Book Clubs, Inc. v. State Board of Equalization (1989) 207 Cal.App.3d 734, in which the out-of-state bookseller was held to be the retailer, and the school, parent-teacher organization, or teacher was held to be the retailer's representative or agent.) In such a case, the supplier would owe sales tax, or would be required to collect use tax, on the total amount of the retail sales price.

However, under Regulation 1597(h), each PTA would be presumed to be selling on its own behalf rather than as an agent or representative of your client where the following factors are present: 1) the PTA solicits the orders from the public in its own name; 2) the PTA collects the sale price from the customers in its own name; 3) the PTA is responsible for and pays your client for the merchandise; and 4) the contracts between the PTA and your client clearly identify the fact that the PTA will purchase and resell the products to its customers. If all of these factors cannot be established, the presumption does not arise, and the PTA would be regarded as the agent of your client.

If these factors are established and the PTA is considered to be buying and selling for its own account, the PTA 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 PTA is regarded as a "statutory consumer" under subdivision (d),(e), or (f) of Regulation 1597. If the PTA is buying and selling for its own account and qualifies as a statutory consumer, your client would be the retailer, but the measure of tax would be the amount the PTA pays your client.

With respect to the first and second factors, although the product catalog that the ultimate purchasers will see has the name "REDACTED TEXT" on the front and back covers, the catalog also has text on the back cover that reads: "Thank you for supporting our fundraising sale," followed by a blank space in which the "school / organization name" is supposed to be entered. The next sentence reads: "Please call your school or organization if you have any questions." On the order form contained in the catalog, the purchaser is advised at the top and again at the bottom of the page to "make checks payable to your school or organization." It appears from these statements included in the catalog that a PTA using this catalog and order form would be soliciting orders from the public in its own name, and that the PTA would also be collecting the sale price from the customer in its own name. Therefore, the first two requirements of subdivision (h) of Regulation 1597 have been met.

With respect to the third factor, the contract you provided states in its "General Terms and Conditions" in paragraph 7 that the PTA's invoice(s) will arrive shortly after they receive the product(s), and that checks "must be issued by the school or organization (no personal checks)." Paragraph 11 provides: "The school / organization further agrees to pay for the merchandise with its own funds and not [to] transmit any funds received directly from its customers." Paragraph 12 advises the school or organization that the products "are custom ordered to your needs, therefore, we cannot accept returns or offer refunds." These statements are consistent with a conclusion that a PTA doing business with REDACTED TEXT under the terms of this

contract is responsible for and pays REDACTED TEXT for the merchandise; therefore, it appears that the third requirement set forth in Regulation 1597(h) has been met.

With respect to the fourth factor, paragraph 11 of the contract contains the following statement: "In compliance with the California State Board of Equalization, it is required that you concur: 'The school / organization is purchasing the property on its own account for resale to its own customers, and is not acting as our company's agent or representative when making sales to its customers. Unless the PTA qualifies as a consumer under specific provisions of the Sales and Use Tax Law, it must hold a seller's permit and report the applicable sales tax on its sales.'" This statement, which Mr. Levine recommended that you use when he wrote to you on December 27, 1995, clearly identifies the fact that under the contract, each PTA purchases and resells the products to its customers; therefore, the fourth requirement set forth in subdivision (h) of Regulation 1597 has been met.

Since it appears that all of the requirements have been met, it is presumed that the PTA's are selling on their own account. Assuming that the PTA's are statutory consumers, REDACTED TEXT is the retailer. This means that REDACTED TEXT owes sales tax, or must collect use tax, on the retail selling price of the property it sells to the PTA's. As explained above, the taxable retail selling price is the amount paid by each PTA to REDACTED TEXT, rather than the amount paid by the ultimate consumer. REDACTED TEXT may not accept a resale certificate from a PTA that qualifies as a statutory consumer.

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: San Diego District Administrator