



STATE BOARD OF EQUALIZATION

October 4, 1993

REDACTED TEXT

Re: Application of Tax to Sales of Calendars/
Address Books at REDACTED TEXT School

Dear Ms. REDACTED TEXT:

This letter is in response to your inquiry dated June 23, 1993. Your letter requested advice as to the application of tax to the sale of a multicultural calendar (1992) and address books (1993) produced by students at REDACTED TEXT High School. You stated in your letter that these calendars are sold at school functions, teacher workshops, through the mail once a year and in a few local stores.

Sales and Use Tax Law- General Discussion

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) When the sales tax does not apply, Revenue and Taxation Code section 6201 imposes a use tax on the storage, use or other consumption of tangible personal property in this state. (Rev. & tax. Code § 6401.)

California Sales and Use Tax Law does not provide a general exemption from sales or use tax for sales to or by charitable, religious, educational or scientific organizations. Therefore, even though an organization is a public school, retail sales to and by the school are generally subject to tax unless there is a specific exemption or rule which applies to the type of property sold or the type of sales transaction involved. The pertinent exemptions and rules are discussed below.

Sales of Calendars and Address Books

The application of tax to the sale of the calendar and the address books depends upon whether a rule known as the nonprofit youth organization rule applies. If the sales meet all four of the requirements of the rule, the youth group is the consumer, not the retailer, of the items which it sells. This "consumer" label means that the sales of property to the youth group are taxable, but the youth group's sales are not taxable. For example, if the youth group purchases clasps and polished stones to make jewelry to sell at a fundraiser,

the sale of the clasps and polished stones to the youth group is subject to tax. The youth group's sales of the jewelry, however, are not subject to tax.

The non-profit youth organization rule, as explained and implemented by Regulation 1597 (copy of Regulation 1597 as proposed to be amended and approved for adoption by the Board is enclosed), is set forth in Revenue and Taxation Code section 6361, which as relevant here, states:

"(a) Any organization listed or described in subdivision (b) is a consumer and shall not be considered a retailer within the provisions of this part, of food products, nonalcoholic beverages, or other tangible personal property made or produced by members of the organization provided, however, that the organization's sales: are made on an irregular or intermittent basis, and that the organization's profits from those sales are used exclusively in furtherance of the purposes of the organization.

"(b) For purposes of this section, 'organization' includes any of the following:

....

(2) (A) Any youth group sponsored by or affiliated with a qualified educational institution, including, but not limited to, any student activity club, athletic group, or musical group.

(B) For purposes of this section, 'qualified educational institution' means any of the following:

(i) Any public elementary, secondary or vocational-technical school providing education for kindergarten, grades 1-12, inclusive, and college undergraduate programs, or any part thereof, operated by state or local government."

For this rule to apply, the following conditions must be met:

1) The organization making the sales cannot be the school itself. The sales must be by a youth group, such as the student council, the band, or the Latin club, which is affiliated with or sponsored by the school.

2) The property that is sold must be made or produced by members of the youth group.

3) The youth group's sales must be made on an irregular or intermittent basis. Irregular or intermittent means associated directly with a particular event, such as fairs, galas, parades, scout-a-ramas, games, and similar activities. The term includes refreshment stands or booths that are utilized at scheduled events of organized leagues but does not include sales made in storefront or mobile retail outlets which ordinarily require local business licenses. (Rev. & Tax. Code § 6361(c).)

4) The youth group's profits from the sales must be used exclusively in furtherance of the purposes of that youth group.

First, it is necessary to determine whether a recognizable student "youth group" exists in this case. Your letter describes the group as "my students and I, with the support of poets from California Poets in the Schools," In the order form letter attached to your letter, the group is identified as the "--- Creative Writing Club". The order form also explains that the address book began in the Creative Writing Class and in the California Arts Council sponsored workshops. The students now producing the address book include students from Special Education classes, English Classes, art classes and members of the Creative Writing Club. A general group of students submitting art or poetry to you to be included in the address book would not qualify as a "youth group". But, if the students producing the calendar/address books have regular meetings under the auspices of the school to decide the contents of the calendars/address books or to make other decisions regarding the activities of the group, then they would be considered a school affiliated/sponsored youth group.

Next, the property must be produced by the youth group. It appears from your letter that the students actually write the poetry and produce the art that goes into the address books. As long as the material in the address books is produced and organized by the students, the production element is met. The fact that someone else merely prints the address book does not change the result.

The requirement that the property be sold by the youth group may pose some difficulties for you depending upon the facts. You explained in your letter that some of the calendars and address books are sold through the mail, some at school sites and some at local stores. You do not mention whether the students in the group actually sell the items. If the calendars and address books are sold by parents or teachers, (for example, the parents or teachers take and fill the orders), rather than the students themselves, the sales made in this manner may not qualify for the exemption.

The youth group's sales of the property they produce must be on an "irregular or intermittent basis". Your letter states that the sales are made at school functions, teacher workshops, through the mail and at local stores. As the rule states, irregular or intermittent means "associated directly with a particular event" which is not conducted on a regularly scheduled basis. Sales made in storefront or mobile retail outlets which require local business licenses do not qualify. As a result, sales made from the local stores are subject to tax. The sales made at particular school events would meet the "irregular or intermittent" requirement and thus would be excluded from sales tax. The sales made through the order form once a year would also be excluded from tax. However, you will have to pay tax on the sales already made through the order form for reasons discussed below under the heading "Order Forms".

Lastly, the proceeds from the sales must be used exclusively in furthering the purposes of the group. Your letter states that "all the money stays in the school student body account under the 'Creative Writing Account'." As long as the money is separated

from the general school funds and is used only to further the purposes of the Creative Writing Club, this last requirement is satisfied.

If the sales for the fundraiser do not meet these requirements, then the student group may be considered a retailer, in which case it would be required to pay tax on the sales. Whether the school, as opposed to the supplier, is the retailer primarily depends upon the contractual arrangement between the parties.

Generally, if school employees or students are taking orders from students, parents, relatives, friends or the general public on forms provided by the supplier of the property being sold and submit the orders to the supplier, the employees or students are taking orders on behalf of the supplier, and the supplier, not the school or youth group, is the retailer who is responsible for payment of tax. The measure of tax is the sale price charged to the students, parents, relatives etc., who are purchasing the property, not the difference between this price and the profit made by the school.

If the school or youth group first orders and receives property from the supplier and then attempts to sell the property to students, relatives, friends, etc., then the school or youth group is usually the retailer of the item and must pay tax on its sales measured by the sales price. In your case, the students produce and sell the property. The youth group is the retailer and must apply with the Local Board office for a seller's permit if it wishes to make any sales with respect to which it is not regarded as a consumer under the non-profit youth organization rule.

When the students sell the calendars/address books to the local stores, they can sell this property ex-tax by obtaining a resale certificate from the store. We are enclosing for your information a copy of Regulation 1668 which explains the proper use and form of a resale certificate.

Order Forms

As briefly mentioned above, the student group will have to remit sales tax on the sales made through the order form. The order form, as it is presently worded, states that the price of the address books/calendars includes tax. Under Regulation 1700 (copy enclosed), there is a presumption that the parties agreed to the addition of sales tax reimbursement to the sales price of tangible personal property if the agreement of sale expressly provides. Your order specifically states that you are collecting sales tax by including it in the selling price. Even if the sales made through the order form qualified as sales by a non-profit youth organization, you must either refund the tax to the buyer or remit the tax collected to the Board. (Regulation 1700(b).)

To avoid this result in the future, you should change the language of the order form and state that the "applicable tax is included."

The order form also raises an issue as to the measure of tax. The address books are sold at a price of \$10 per book on the order form. However, a person can pay \$25 for an address book and membership into the "Friends of the Creative Writing Project". For sales

made at the \$25 price, we will consider the price of the book to be \$10 and the remainder as a contribution. Tax is to be computed on \$10 rather than \$25.

Conclusion

Sales made through the local stores are subject to tax, but you sell the property to the stores ex-tax by obtaining a resale certificate from the store. Sales meeting the requirements of the non-profit youth organization rule are excluded from sales tax. However, tax collected on such sales which are made through the order forms must either be refunded or remitted to the state. Future sales through the order forms, if they meet the requirements of the non-profit youth organization rule, will be excluded from tax.

The group must apply for a seller's permit. Unless those sales are sales for resale, the group must pay sales tax measured by the sales price of the calendars and address books for sales made by the group which do not qualify under the non-profit youth organization rule.

If you have any further questions regarding the Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Ms. Sukhwinder K. Dhanda
Staff Counsel

SKD:plh

Enclosures: Regulations 1597, 1668, 1700. (The copy of Regulation 1597 is a version as proposed to be amended and approved for adoption by the Board.)