

**STATE BOARD OF EQUALIZATION**

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December 9, 1992

REDACTED TEXT

Re: Camp REDACTED TEXT
Non-Profit Youth Organization

Dear REDACTED TEXT:

I am answering your letter to me of October 2, 1992. It was a pleasure making your acquaintance over the phone the previous day. I have purposely delayed responding pending the outcome of the recent election. You ask if the above camp qualifies as a non-profit youth organization within the meaning of Revenue and Taxation Code Section 6361 and whether or not sales by the camp of certain items are subject to tax.

I. FACTUAL BACKGROUND

You indicate that you are the Chancellor, or Attorney for the REDACTED TEXT. The Diocese operates a subsidiary corporation, REDACTED TEXT. You further indicate that both the Diocese and REDACTED TEXT qualify for exemption from income tax under Internal Revenue Code Section 501(c)(3).

You describe the operation of the camp as follows:

"The primary function of Camp REDACTED TEXT is to operate a summer camp for students. Although the primary focus of the camp is for REDACTED TEXT youth, it is not limited to this denomination. Because of the balanced nature of this program, we even have students who are not Christians. The program for the camp is a balance of Christian Education, sports, crafts and other usual summer camp type programs.

"The overwhelming majority of the campers attend for a period of one week. They sleep in tent/cabins on the premises, near Lake Tahoe, and eat their meals in the Mess Hall. There is a modest fee for this week spent at the camp with scholarships available. The modest fee includes the cost of the meals. Also available are snack foods, which are sold on a casual basis.

"These snack foods are sold at a canteen which also sells souvenirs, such as Camp REDACTED TEXT caps, stuffed animals, Camp REDACTED TEXT flashlights,

Camp REDACTED TEXT mugs, etc. The camp has been paying sales tax on these items."

II. OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ..." (§ 6091.) "Exemptions from taxation must be found in the statute." "Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 P.2d 201]. The taxpayer has the burden of showing that he clearly comes within the exemption." "Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571]."

B. Non-Profit Youth Organizations.

There are no statutory exemptions from either the sales or use tax merely because the user of the property purchased is a nonprofit organization. (Annots. 390.0020, 390.0040. Sales and Use Tax Annotations are excerpts from previous Board staff opinion letters and serve as a guide to Staff positions.) Tax applies to sales of meals or other tangible personal property at summer camps, whether operated by municipal or private corporations, or other parties. There are two exceptions to this rule. First, if the camp qualifies as an educational institution, tax applies in the same manner as to schools and educational institutions. To be considered a school, however, the camp must conduct regularly scheduled classes, with required attendance, in charge of qualified instructors. (Reg. 1506(f).) [Handwritten: "See now Reg 1506 g. JLT 2/27/02"]

Second, as you are aware, Section 6361, interpreted and implemented by Regulation 1597(d), provides that a qualified youth organization is the consumer and not the retailer of food products, nonalcoholic beverages, and tangible personal property created by members of the organization which are sold on an irregular or intermittent basis provided the profits from such sales are used solely and exclusively in the furtherance of the purpose of the organization. Thus, such groups' qualifying sales of those products are exempt from sales tax. (Reg. 1597(d)(1).) In addition, neither sales nor use tax applies to such groups' sales or use of candy, confectionery, and snack foods, when sold in an intermittent or irregular basis if the profits therefrom are used solely to support the purposes of the organization. (Reg. 1597(e).)

[Handwritten next to 1597 (d) and 1597 (d)(1) in prior paragraph: "See now 1597 (e)" and "1597 (e)(1) JLT 2/27/02"]

C. Tax Consequences for Camp REDACTED TEXT

As you know, Proposition 163 returned candy, confectionery, and "snack foods" to the status of food products the sales of which are exempt from tax under Revenue and Taxation Code Section 6359, effective December 1, 1992. Thus, after that date, sales and use of those products are exempt from tax.

You ask four questions. I will organize my response around your questions.

1. Does Camp REDACTED TEXT qualify as a "non-profit youth organization" under Regulation 1597(d)? [Handwritten: "See now 1597 (e) JLT 2/27/02"]

Regulation 1597(d)(1)(A) defines a "qualified youth organization" as including one which qualifies for tax-exempt status under Internal Revenue Code Section 501(c)(3), which provides a supervised program of competitive sports for youth or promotes good citizenship in youth as its primary purpose, and which does not discriminate on the basis of race, sex, nationality, or religion; or any youth group or club sponsored by or affiliated with a qualified educational institution. You refer to the camp's residents being students and to one of its programs as "Christian Education." You do not, however, describe the program of instruction. Thus, we cannot determine if Camp REDACTED TEXT qualifies as an educational institution or if it is affiliated with one and so for the purpose of this letter will assume that it is not.

The program you outline indicates that Camp REDACTED TEXT is a summer recreational camp with no particular emphasis in good citizenship. We do not need to resolve that issue, however, because of the rule which answers your Question 3 below.

2. Is the cost of meals at the camp subject to sales tax given the fact this cost is included within the total fee?

Under Regulation 1506(f), cited above, meals provided for consumption by inmates of summer camps are subject to tax unless the camp itself qualifies as a school or educational facility. (Annot. 360.0160.) As Camp REDACTED TEXT does not so qualify, the portion of the "modest fee" which represents the cost of the meals is subject to tax.

[Handwritten next to 1506(f) in prior paragraph: "now 1506(g) 2/27/02 JLT"]

3. Souvenirs are sold at a camp store which appears to have regular hours. Regulation 1597(d)(1)(C) defines sales as "intermittent or irregular" when they are made at particular events which are not conducted on a regularly-scheduled basis, or at refreshment stands or booths at scheduled events or organized youth sports leagues. "[S]ales made in storefront or mobile retail outlets which ordinarily require local business licenses do not qualify." We have previously determined that such stores as the one at Camp REDACTED TEXT are a storefront outlet which would ordinarily require a local business license, and the items sold there are purchased for resale there. As a result, sales made from the store are subject to tax.

[Handwritten next to 1597(d)(1)(c) in prior paragraph: "now 1597(e)(1)(c) JLT 2/27/02"]

4. Firewood has been made out of several dead trees which have been cut down, presumably on camp property. The firewood will be sold to attempt to offset the cost of cutting down the trees. Even if the camp qualified as a non-profit youth organization, firewood is not "tangible personal property made by members of the organization." Sales of the firewood are thus subject to tax.

For your information, I have included a copy of Regulation 1597. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es
Enclosure: Reg. 1597