



STATE BOARD OF EQUALIZATION

(916) 445-5550

December 11, 1991

REDACTED TEXT

Re: REDACTED TEXT

Dear REDACTED TEXT:

Your letter dated September 19, 1991 to our San Jose District Office has been referred to the Legal Division for response. You represent the REDACTED TEXT. You inquire whether the activities of the REDACTED TEXT come within the provisions of Revenue and Taxation Code section 6361 or whether the REDACTED TEXT are required to obtain a seller's permit and pay sales tax on its sales. You explain:

"The REDACTED TEXT exists to promote the REDACTED TEXT, a sister corporation which provides programs for youths which include training for and participation in various local, state and national drum and bugle drill team competitions. Both the REDACTED TEXT and the REDACTED TEXT attempt to instill values of good sportsmanship, social responsibility, competitiveness, personal esteem and respect for others in the youth activities that they sponsor.

"Both the REDACTED TEXT and the REDACTED TEXT are tax exempt under Section 501(c)(3) of the Internal Revenue Code and Section 23701(d) of the California Revenue and Taxation Code. Both organizations do not discriminate on the basis of race, sex, nationality or religion.

"Each organization runs a once-weekly bingo game at which they also operate a concessions stand where refreshments are sold to participants at the bingo games. All net proceeds are used by the organizations in furtherance of their youth programs and charitable activities.

"The items which are sold at the bingo games are purchased by the REDACTED TEXT and REDACTED TEXT at retail rates and sales tax is paid on all purchases. No sales tax is collected by the REDACTED TEXT upon resale to the bingo participants."

Revenue and Taxation Code section 6361 provides that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions including that the sales are made on an irregular or intermittent basis. Subdivision (d)(1)(C) of Regulation 1597 defines “irregular or intermittent” for purposes of this provision:

“‘Irregular or intermittent’ is defined to mean sales made at particular events, such as fairs, galas, parades, scout-a-ramas, games, and similar activities, which are not conducted on a regularly scheduled basis. Sales made at refreshment stands or booths at scheduled events of organized youth sports leagues are considered made on an ‘irregular or intermittent’ basis; however, sales made in storefront or mobile retail outlets which ordinarily require local business licenses do not qualify.”

It appears likely that the sales about which you inquire are made from facilities requiring local business licenses. If so, the activities do not come within section 6361 on this basis. However, even if the activities do not require a local business license, they do not qualify under section 6361. As explained in the provision quoted above, “irregular or intermittent” excludes activities which are conducted on a regularly scheduled basis. The activities about which you inquire are sales from concessions stands operated at bingo games which are conducted every week. We regard activities conducted once a week, every week, to be regularly scheduled events. Since sales come within section 6361 only if they are not conducted on a regularly scheduled basis, the sales from concessions stands about which you inquire do not come within the provisions of section 6361.

Since the REDACTED TEXT will not be regarded as a consumer under section 6361, it will be regarded as the seller of items sold at the concessions stands and will therefore be required to hold a California’s seller’s permit. (Rev. & Tax. Code §§ 6014, 6066.) The REDACTED TEXT may apply for a permit at the local district office of the Board. Its sales from the concessions stands are subject to sales tax unless specifically exempt by statute. The relevant exemption is for food products for human consumption. Regulations 1602 and 1603, copies of which are enclosed, explain which sales are regarded as taxable sales and which are regarded as exempt sales of food products. As relevant to the sales in question, please note that there is no exemption for sales of carbonated beverages, hot foods, candy, confectionary, and snack foods. Furthermore, tax applies to sales of otherwise exempt food products when the sales are within, and for consumption within, a place the entrance to which is subject to an admission charge or if the food is for consumption at facilities provided by the retailer. (Reg. 1603(d) and (f).) It is possible that all of the sales at the concessions stands come within one of these provisions and, if so, are all subject to tax.

Since REDACTED TEXT will be regarded as a retailer of property sold at the concessions stands, it may purchase that property extax for resale by issuing the vendors timely and valid resale certificates as discussed in Regulation 1668, a copy of which is enclosed. You indicate that the REDACTED TEXT are currently paying sales tax (reimbursement) when purchasing the property to be resold at the concessions stands. As

indicated above, some or all of those sales are subject to sales tax. However, the REDACTED TEXT may take a tax-paid purchases resold deduction with respect to any sales tax reimbursement or use tax paid when purchasing property that is resold at the concessions stands. This is explained in Regulation 1701, a copy of which is enclosed.

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

Sincerely,

David H. Levine
Senior Tax Counsel

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Enclosures