



505.0362

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

(916) 327-3400

December 5, 1989

REDACTED TEXT

Re: Clarification of tax exempt status

I am writing to further clarify my August 8, 1989 letter to you which verified that retail sales to the United States Holocaust Memorial Council (Council) are not subject to California Sales and Use Tax (Rev. & Tax. Code § 6381) because the Council is a federal instrumentality.

It has been pointed out to me that employees of the Council might misinterpret my letter to mean that their reimbursement expenses (e.g., hotels, car rentals, meals) are tax exempt. This is not the case as such sales are considered to be sales to the individual. Only sales made to the Council qualify for exemption. Sales and Use Tax Regulation 1614(a) (enclosed) provides pertinent part that:

“Where payment for tangible personal property sold or consumed in this state is made partly by the United States or its instrumentalities and partly by nonexempt persons, the payment is exempt to the extent of the United States’ or its instrumentality’s share provided it is made directly to the vendor by the United States or its instrumentality. If the nonexempt party makes full payment and then seeks reimbursement from the United States or its instrumentality, the entire amount is taxable even though the United States or its instrumentality may reimburse him in full or in part.”

We have previously considered the question of whether car rentals to employees of the United States Government traveling on government business are exempt from tax if the employee pays for the rental by cash or personal credit card. Generally, such leases are subject to sales tax even though the government employee may use a GSA lessor and receive a GSA rate. Only where there is clear evidence that an individual is renting as an agent of the United States Government would the rental transactions be exempt from tax.

It does not automatically follow from the fact that a government agency reimburses an employee for expenditures, that the employee was acting as a purchasing agent of the federal government. However, the tax exemption would be allowed where, for instance, an automobile is rented pursuant to a contract between the automobile leasing company and a federal government agency or where the employee can provide explicit written authorization from a federal agency to incur a specifically described expenditure. Since the Council does not utilize a purchase order

system, it is unlikely that purchases or rentals by its employees would fall within this narrow class of exceptions.

In summary, the sales tax exemption applies only to purchases made and paid for directly by the Council. The only exceptions are those narrowly drawn categories discussed above.

Please feel free to contact me or our New York office at 675 Third Avenue, Room 520, 10017-4015, telephone (212) 697-4680, if you have any questions regarding this letter.

Sincerely,

Stella Levy
Tax Counsel