

505.0810

Memorandum

To: Mr. Phil Klepin
San Diego District Principal Auditor

Date: September 24, 1990

From: John L. Waid
Tax Counsel

Subject: Veterans Administration Volunteer Service Advisory Committee

Your memorandum of July 24, 1990, to Tax Counsel David Levine has been referred to me for a response. You wanted to know whether the legal staff agreed with the opinion of Sheryl D. Bowlin, Tax Auditor, that the Veterans Administration Volunteer Service (hereinafter "VAVS") Advisory Committee (hereinafter "Committee") is an instrumentality of the federal government so that, sales to and by the Committee are sales to and by the United States and thus exempt from sales and use tax.

I. FACTUAL BACKGROUND

You attached to your request a letter of President of the San Diego Veterans Administration Committee, requesting tax-exempt status. Mr. REDACTED TEXT discussed his committee's operations as follows:

"...I am President of an advisory committee composed of members of social, community service, fraternal, religious and veterans organizations that lend support to the Department of Veterans Affairs' San Diego Medical Center in its effort to provide the best quality health care to hospitalized veterans. We also provide support to indigent patients and their families. Some examples are as follows:

"1. Comfort items such as toothbrushes, toothpaste, shave cream, razors, deodorant, slippers, writing material and stamps.

"2. During the recent holiday season we provided turkeys and bread for 84 food baskets for needy San Diego veterans and their families.

"3. From time to time we provide transportation for veterans from their home to the hospital and return.

"4. Throughout the year we organize special events for the patients particularly on holidays.

"5. We have purchased vans, medical equipment and additional items necessary to ensure that hospitalized veterans have the best possible care.

"The programs that we support, and the equipment and supplies that we provide, are at no cost to the Medical Center, patients and their families, or the VA staff.

"Our committee has no paid members. All donations and funds raised go directly to support one or more of our programs. Funds are raised through donations, our annual bazaar, and the sale of T-shirts and pins, year round, by the committee. All funds are controlled by the committee - - not by VA employees.

"Our committee meets quarterly. The treasurer keeps accurate records. He prepares a financial statement which is sent to all members, along with the minutes of the meetings. Tax-exempt status would allow us to purchase additional supplies for needy veterans and their families ..."

You also attached a letter from REDACTED TEXT, Chief, Voluntary Services, of the San Diego VA Medical Center, which enclosed a copy of the National Committee's charter. Also attached were a copy of Public Law 92-463, the Federal Advisory Committee Act [5 U.S.C. App. 2, § 1 ff.] and a copy of VA Manual M-1, Part III, "Operations-Voluntary Service." The manual indicates that the National Committee's Charter was issued by Congress on February 5, 1973.

Manual M-1 provides that the National Committee assists the VA's Chief Medical Director in an advisory capacity in coordinating the participation of the national and local organizations in VAVS. (Manual M-1, ¶2.10.a.) The local advisory committee advises the local facility director in coordinating plans and policies for community participation in VAVS. (Manual M-1, ¶2.03.a.) General Post Funds support Committee activities relating to the welfare and comfort of patients. Committee business, other than providing for the needs of patients, is supported by Committee fund-raising activities. (Manual M-1, ¶2.05.) The operations of the Committees are carried out pursuant to a grant of authority contained in 38 U.S.C. Section 213. (Manual M-1, ¶1.03.a.)

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 noted, all statutory references are to the Revenue and Taxation Code.) A "retailer" is one who engages in the business of making retail sales of tangible personal property. (§ 6015(a).)

Sales to the United States or its unincorporated agencies and instrumentalities are exempt from the sales and use tax by statute. (§§ 6352, 6381(a); 18 Cal. Admin. Code § (hereinafter "Regulation" or "Reg.") 1614.) The United States Supreme Court has concluded that an entity is a federal instrumentality exempt from state sales and use taxes only when that entity is considered to be an arm of the government "deemed by it essential for the performance of governmental functions." Standard Oil of California v. Johnson (1941) 316 U.S. 481, 485, 62 S.Ct. 1168, 86 L.Ed. 1611. Standard Oil indicates some of the factors that the court considers important in determining whether or not a given organization has such a close connection with the federal government as to render it immune from state taxation: (1) the entity is established and operates under the authority of federal statutes and regulations; (2) the object of the entity is to carry out federal policy; and (3) profits, if any, do not go to individuals. (316 U.S. at 484-485.)

B. Tax Status of the Committee

The materials you enclosed indicate that the Committee raises money by, among other methods, sales of tangible personal property on a regular basis. Thus, the Committee is a retailer as defined above and so required to pay sales tax on those transactions unless otherwise exempted. Also, the materials indicate that the Committee purchases various items for the San Diego facility, its patients and their families. Without an exemption, the Committee would be required to pay sales tax reimbursement or use tax, as applicable, upon those transactions as well.

The VAVS National Advisory Committee is established under the auspices of the Federal Advisory Committee Act and derives its authority from other federal law. The copy of the charter of the National Committee which you enclosed appears to adhere in form and content to the requirements of the Act. (5 U.S.C. App. 2, § 9.)

Previous Board staff rulings have determined the VA itself to be a federal instrumentality, exempt from sales and use tax. (II Bus. Tax. L. Guide Annots. 505.0760-505.0800.) Regarding the Committee, the National Chairman is responsible to the Chief Medical Director of the VA. The local committees are under the authority of the director of the local VA facilities. The operations of the local committees are controlled by a VA manual. Profits are used to carry out the committee's programs. Other aspects of the operations of the Committee, as set forth in the papers you enclosed, support the conclusion that the VAVS Advisory Committee cannot realistically be viewed as an entity separate from the federal government. We therefore agree with Ms. Bowlin in concluding that the Committee is a federal instrumentality and that its retailing activities and purchases are exempt from sales and use tax. (See, Standard Oil, *ibid.*)

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

JLW:sr