

Mr. Robert Nunes

November 16, 1983

Gary J. Jugum

Dog Shows

This is in response to your memorandum of August 30, 1983, but which you have raised a question as to how the sales tax applies to the activities of persons who serve in the capacity of superintendent of dog shows.

Persons who serve as superintendents of American Kennel Club sanctioned dog shows engage in a well defined and long established set of customary duties. The customary duties of licensed American Kennel Club superintendents include:

Preparation and distribution of premium lists; receiving and recording entries and fees; compiling catalog; preparing and mailing identification cards, tickets, judging programs, etc., to exhibitors, handlers and officials, preparing judges' books, armbands, and judges' bags; computing cash prizes published in the premium list offered "open to all" and preparing such cash prizes for payment in the judging ring (from Club funds received from entries and should said prize money exceed Club funds held by the Superintendent, the Club agrees to supply the difference before the opening hour of the show); sending a marked catalog to the Club Secretary and to the American Kennel Club, handling the records of cancellation of awards by the American Kennel Club after the show; and making all reports of the American Kennel Club.

The superintendent is responsible for furnishing so-called premium lists, which are basically entry forms. The superintendent is also responsible for publishing for the use of or sale by the club of catalogs containing the usual show data consisting of title pages, list of officers and committees, certification and extracts from rules, list of judges, judging program, schedule of points, prizes, entries, index to exhibitors, variety clubs, and index to breeds. The premium lists and the catalogs are furnished in quantity.

Other specific information concerning the activity of superintendents is attached to REDACTED TEXT memorandum to you of August 29, 1983, and is hereby incorporated by reference.

With respect to the particular superintendent, REDACTED TEXT whose activities we have investigated, the audit staff has ascertained that the bulk of the tangible materials acquired by her are acquired from out-of-state printers. Some of these items are mailed directly to potential entrants in this state. Others of the materials are sent directly to REDACTED TEXT. Generally, the clubs offer the catalogs for sale at the shows at prices ranging from \$2.50 to

\$4.00. The superintendent agrees to furnish a base quantity of catalogs as a part of the lump-sum fee charged for services and publications. Additional catalogs are charged for on a per-copy basis at, for example \$1.50 each.

Regulation 1501, "Service Enterprises Generally", provides that persons engaged in the business of rendering service are consumers, not retailers, of the tangible personal property which they use incidentally in rendering the service. Tax, accordingly, applies to the sale of the property to them.

In view of all the facts of this case, as set forth in the report from the district office, there can be no question but that AKC superintendents are engaged in service enterprises. This means that they are consumers of the property utilized in the course of the service activities even though there may be a transfer of ownership as to some of the property to potential entrants, to the clubs sponsoring the show, or to participants in the show. With respect to tangible personal property acquired from out of state, the superintendent is the consumer of items sent to the superintendent. The superintendent is also a consumer of items mailed directly to potential entrants, but tax cannot be applied to these latter items because the consumption takes place outside this state, when the properties are deposited in the mails. That is, consistent with our general rules concerning distribution by mail from out-of-state points, the distribution or use is complete when the property is deposited in the mail since the California recipient is a donee and not a purchaser.

The one complicating factor in this case concerns the catalogs. Preliminarily, it may be noted that there are two ways in which a transfer of ownership for a fee can be nontaxable. First, a transfer of ownership can be nontaxable because the transfer is incidental to the performance of a service, as specified in Regulation 1501. Second, a transfer of ownership can be nontaxable because the transfer may qualify as a casual or isolated sale and thus be nontaxable as an "occasional sale" under Revenue and Taxation Code Sections 6006.5(a) and 6367. It may be noted that persons who sell tangible personal property to those who dispose of the property in transactions qualifying as "occasional sales" are regarded as retailers of the property.

Keeping in mind the principles stated in the prior paragraph, there are three approaches to taxing the catalog transactions in question. The first approach is to treat the superintendent as having acquired the catalogs for resale, as having resold the catalogs to the dog club, and to treat the dog club as having made taxable retail sales of tangible personal property. Under this approach, use tax would not be assessed against the superintendent. No part of the fee charged by the superintendent to the dog club would be taxable. Tax would apply to fees charged to purchasers by the dog club.

The second approach is to treat the superintendent as having purchased the catalogs for resale but as the retailers of the catalogs to the dog clubs. This would be based upon the finding that sales made by the dog clubs qualify as "occasional sales". The dog clubs would not have been purchasing the property for resale in the regular course of business. Under this approach, some portion of the lump-sum fee charged by the superintendent to the dog club would be subject to sales tax. In those instances where a price is established for additional catalogs above the base quantity, this figure could be utilized as the retail selling price of the catalogs to the dog clubs.

The third approach is to treat the superintendent as the consumer of the items because they are furnished incidentally to the performance of a service. This conclusion is supported by the fact that no separate charge is made for the items by the superintendent to the dog club. Sales made by the dog club would be treated as exempt occasional sales.

(There is, of course, a fourth approach under which superintendent is treated as a consumer and the dog club is treated as making taxable retail sales.)

The critical question is – are sales made by the dog club taxable? If they are, it would tend to follow that the acquisition and the disposition by the superintendent are both nontaxable.

Regulation 1595 “Occasional sales [etc.]” provides that:

“Generally, a person who makes three or more sales for substantial amounts in a period of 12 months is required to hold a seller’s permit. A person who makes a substantial number of sales for relatively small amounts is also required to hold a seller’s permit.”

The implication is that persons who make a few sales for relatively small amounts are not required to hold a permit. It would appear that under the test of the regulation, a dog club would not be required to hold a permit for a one-day dog show. To put the matter another way, the disposition of the catalogs made by the dog show seems to fall short of the disposition in the “regular course of business” contemplated by Revenue and Taxation Code, Section 6007.

Focusing on the superintendent’s disposition of the property, the question becomes, is the transfer to the dog club a sale transaction? (If it is a sale transaction, it is a retail transaction upon the assumption that the dog club’s disposition of the property may be classified as an “occasional sale”.)

Regulation 1501 provides that “if in addition to rendering service [the persons rendering the service] regularly sell tangible personal property to consumers, they are retailers with respect to such sales”, [emphasis added]. In our view, the furnishing of catalogs by the superintendent to the dog club under the circumstances of this case where no separate charge is made for the catalogs is not an instance of the type described in Regulation 1501 which necessitates that the superintendent be treated as a retailer.

What is important here is the essence of the transactions as service transactions versus mercantile transactions. Neither the superintendent nor the dog clubs are engaged in any regular selling activities. Both ought to be viewed as consumers. We thus believe that it is consistent with Regulation 1501 and Section 6006.5(a) and within the administrative power of the Board to find that superintendents conducting AKC dog shows are consumers of all materials (including catalogs) furnished incidentally to the organizing and conducting of the show. Our recommendation is that the tax be assessed on this basis at this juncture.

We are herewith returning your file labeled REDACTED TEXT.

GJJ:jr