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Executive Director

December 7, 1995

X-----

Re: X-----

Dear X-----,

This is in response to your letter dated September 18, 1995 in which you ask how tax applies to your charges for various goods and services provided by your company in four particular situations. Each of your questions is quoted below, followed by our response.

"1. During the upcoming holiday season, I plan to offer a 'call from Santa' service, which will entail telephoning children and playing a message from Santa. Is this subject to sales tax?"

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) The term "sale" includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Rev. & Tax. Code § 6006(a).)

We do not regard your sale of a telephone call and message from Santa as a sale of tangible personal property. Consequently, your sale of this service is not subject to sales tax.

"2. I also anticipate offering a 'letter from Santa,' which will be a personalized letter sent to individual children. Would this be taxable?"

You have not described the process you will use to create the personalized letters. For purposes of this opinion, I assume that you will write a form letter and use word processing equipment or a typewriter to set up the basic form. When a purchaser orders a letter, he or she will provide you with facts which are unique to each child. You will insert the new information, such as the child's name, into the appropriate spaces in the letter. Through this process you will modify the form letter and create each child's personalized letter from Santa. I also assume that the personalized letter will be sent to a child in California.

The term "sale" includes the transfer of tangible personal property which has been produced, fabricated, or printed to the special order of the customer. (Rev. & Tax. Code § 6006(f).) tax applies to charges for producing multiple copies of letters using word processing

equipment. Multiple copies include form letters produced with a slight variation which personalizes essentially the same letter. (Reg. 1502.1(a).) Tax applies to the entire charge without deduction for charges for setting up the machine, keyboarding, or assembling the material. (Rev. & Tax. Code § 6012, Reg. 1502.1(a).) your situation comes within this rule. Thus, tax applies to your company's entire gross receipts from the sale of each letter.

"3. If I market the call and letter from Santa as a fund-raiser through non-profit organizations like PT A, would the sales be taxable? If so, how much of the transaction would be taxed: the entire amount paid to the non-profit organization, or the amount the organization pays to my company?"

It is not clear from your letter whether you will sell the telephone call and letter as separate items, or whether you will sell them in one package. As discussed above, we do not regard your sale of the telephone call as a sale of tangible personal property. Therefore, if you sell the telephone call as a separate item, your company's sale of the call is not subject to sales tax.

As also discussed above, your sale of the letter is subject to sales tax measured by the entire gross receipts from the sale. (Rev. & Tax. Code § 6012.) When service is purchased as part of the sale of tangible personal property, the price of the service is included in the taxable gross receipts. (Id.) If you sell the telephone call and letter in one package, and do not give the consumer the option of purchasing the letter without the call, the call is regarded as part of the sale of the letter. Under such circumstances, the taxable gross receipts from the sale of the letter include the total amount of the sale price of the package. If, however, a person purchasing the package has the option to purchase the letter without purchasing the call, the call will not be regarded as part of the sale of the letter. In this situation, the taxable gross receipts from the sale of the letter will not include the price of the call.

You have asked how sales tax would apply if you market the items as a fundraiser through nonprofit organizations like the PTA. California law does not provide a blanket exemption from sales tax for sales to and by such organizations. A retail sale of tangible personal property to or by such an organization will be subject to tax measured by the full selling price unless California law provides a specific exemption or exclusion.

Under some circumstances, certain organizations who purchase property for their own account are considered to be consumers rather than retailers if they use the profits from their sales exclusively in furtherance of the purposes of the organizations. (Rev. & Tax. Code § 6370(b).) In those cases, the sales to the organizations are the taxable sales, and the transfers by the organizations are not taxable. The measure of tax is the supplier's selling price to the organizations. The organizations who are considered consumers under these circumstances include nonprofit parent-teacher associations chartered by the California Congress of Parents, Teachers, and Students, Incorporated, and equivalent organizations performing the same type of service for public or private schools and authorized to operate within the school by the governing authority of the school. Nonprofit parent cooperative nursery schools are also included in this provision. (Rev. & Tax. Code § 6370(a), Reg. 1597(f).)

The treatment of such a nonprofit organization as a consumer applies only when it buys and sells the property on its own account. If, instead, it acts as the agent of the company furnishing the property, the company furnishing the property is regarded as making a retail sale to the purchaser and the measure of tax is the total sales price collected by the nonprofit organization. The distinction between an organization who buys and sells on its own account and an organization who acts as an agent for the supplier is set forth in subdivision (h) of Regulation 1597:

"When a nonprofit organization solicits orders, collects payments, and distributes tangible personal property for a supplier, it is considered to be the agent of that supplier. Accordingly, the supplier, not the organization, is the retailer of the merchandise sold. This is true unless documentation establishes that the nonprofit organization is buying and selling for its own account. The nonprofit organization is presumed to be buying and selling on its own account if all of the following factors are present: 1) the organization solicits the orders from the public in its own name; 2) the organization collects the sale price from the customer in its own name; 3) the organization is responsible for and pays the supplier for the merchandise; and 4) the contract between the organization and the supplier clearly identifies the fact the organization will purchase and resell the products to its customers. If it is selling for its own account, the nonprofit organization will be required to obtain a permit and will be considered the retailer, unless ... the nonprofit organization is classified [as a consumer as discussed above]."

You have not described the process you will use to market the call and letter through the organizations. If the nonprofit organization acts as your company's agent as set forth in the provision quoted above, your company is making retail sales to the persons solicited by the nonprofit organization, and tax applies to the amount collected by the nonprofit organization from those purchasers. If, instead, the nonprofit organization is buying and selling on its own account, and not as your agent, and if it is a consumer under section 6370, you are making a sale to the organization, and it is a taxable retail sale. The measure of tax would be the selling price to the organization.

"4. I am also working on a program to provide personalized books to young school children without cost to the school or parents. The program would be supported by local businesses. Would the sponsorship-fee paid to my company by the supporting local firms be subject to sales tax? If not, would I have to pay tax on my purchase price of the book kits?"

The series of transactions you plan to conduct is not clear from your letter. We assume that you will purchase book kits for the purpose of incorporating them into the personalized books, and that local businesses will pay you for the finished books when you transfer them to school children.

A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) The sale of tangible property is regarded as a non-taxable sale for resale when it is sold to persons who purchase it for the purpose of incorporating it into the manufactured article to be sold, as, for example, any raw material becoming an ingredient or

component part of the manufactured article. (Reg. 1525(b).) You incorporate the kits you purchase into personalized books which you sell to local businesses. Based on our understanding of your transaction, you are regarded as purchasing the kits for resale. Thus, you may purchase the kits extax for resale by issuing timely resale certificates. (Reg. 1668.) Enclosed for your review is a copy of Regulation 1668 which sets forth the requirements and procedures for resale certificates.

You are regarded as selling the books to the local businesses. That sale is at retail, and you will therefore owe tax measured by your gross receipts from the sale of the books, that is, the amount paid to you by the local businesses.

If you have further questions, feel free to write again. If you do so, please provide a detailed description of the transactions about which you inquire.

Sincerely,

David H. Levine
Supervising Staff Counsel

DHL/cmm
Enclosure