



STATE BOARD OF EQUALIZATION

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February 3, 1994

BURTON W. OLIVER
Executive Director

X-----

Re: X-----
Sale of Donated Property

Dear X-----,

I am responding to your letter to the Legal Department dated December 16, 1993. You request a ruling that the donation of certain items of tangible personal property to X----- an IRC 170(b) organization, is exempt from use tax under Revenue and Taxation Code (“the Code”) section 6403 and that subsequent gifts of such property by persons making donations to X----- are exempt from sales tax under the Code. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) We note that the Board staff cannot issue tax rulings; only the Board itself may do that. However, we can give you our opinion regarding the correct application of tax to a given set of facts. We also note that, since you do not identify the trustee, this letter does not constitute specific written advice to the taxpayer under Revenue and Taxation Code section 6596 as to the issue of the applicability of tax to the transfer from the trustee to X----- . Rather, it constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts.

I. FACTUAL BACKGROUND.

You describe the factual background of your problem as follows:

“On November 29, 1993, X----- received a distribution of real and personal property from the trustee of a revocable living trust in accordance with the terms of the instrument establishing said trust. Among the assets received by X----- are certain fine art limited edition prints and leather covered books. These assets had been held for resale by an agent acting on behalf’ of the trustee. Since these assets were held for resale, no sales or use tax was paid.

“X----- contends to give the prints and books to persons making charitable donations to X----- acknowledges and understand that it must pay sales tax, in the event such items of personal property are sold by X-----.

“[T]he trustee, through its agency, held the personal property for resale. When any of the personal property was sold, sales tax was collected and paid over to the Board. Therefore it

would appear that the personal property now in the possession of X----- is exempt from use tax under section 6403 of the Code.”

“X----- is a nonprofit religious organization that has not in the past engaged in the business of selling tangible personal property as such is described in the Code”

My review of the files indicates that X----- does not possess a seller's permit. We assume, from your statement that the trustee paid tax on its sales, that it did have a seller's permit. You attached to your letter a copy of the Private Letter Ruling which X----- received from the IRS determining that donations to it are exempt from income tax under IRC Section 170(b) (1) (A). This letter indicates that X----- headquarters is in Los Angeles, California.

II. OPINION.

In California, except where specifically exempted by statute, 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. A "retailer" is one who engages in the business of making retail sales of tangible personal property. (§ 6015(a).) A "retail sale" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (§ 6007.)

"[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ... " (§ 6091.) "Exemptions from taxation must be found in the statute." "(Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 PO.2d 201.]) The taxpayer has the burden of showing that he clearly comes within the exemption." (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

Likewise, section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for use, storage, or other consumption in this state unless otherwise exempted from taxation by statute. section 6403 exempts from use tax the storage, use, or other consumption in this state of property donated by any seller to any organization described in IRC section 170(b) (1) (A).

Section 6403 was designed to exempt retailers from use tax when they withdrew from resale inventory property which they had purchased free of tax by issuing resale certificates to their suppliers. The facts as you recite them indicate that the trustee was a seller under the Code since it apparently had a seller's permit, but also that the property was transferred gratis to the trustee by the grantor when the trust was created. Since that transfer appears to have been a gift from a person not a seller, it was not subject to sales or use tax at all, so section 6403 does not apply. The transfer to X----- was just an ordinary gift of property with no tax consequences.

You ask if X----- is liable for use tax when it gives out the property in return for contributions. We have previously determined that if a charitable organization gives property in

return for donations with no minimum donation suggested, that is not a sale. (Annot. 495.0370. Sales and Use Tax Annotations are excerpts from previous Legal staff opinion letters and serve as a guide to staff positions.) Assuming that X----- does not suggest a minimum donation for a donor to receive the property in question, the transfer is not a sale nor it a taxable use since X----- did not acquire the property in a transaction subject to the Sales and Use Tax Law.

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

Sincerely,

John L. Waid
Tax Counsel

JLW:es