



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 920 - 7445

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October 14, 1994

BURTON W. OLIVER
Executive Director

X-----

Re: X-----

Dear X-----,

This is in response to your letter dated September 27, 1994. You state that X----- will soon begin to collect donations of local industrial discards such as packing materials and punchouts from gaskets, most of which have little retail value and have been going into landfills. X----- will make these materials available to teachers and children's groups for reuse as art supplies or learning materials.

You further state that X----- "will charge a general 'shipping and handling fee' to help us cover the costs of transportation from the donating company and handling within our warehouse." You state that this fee will not reflect the value of the discards; instead, it will be based on the volume of materials. You suggest, for example, that the fee for a grocery bagful of discards may be \$5. You ask whether a fee covering collecting and handling costs would be subject to tax.

Initially, we note that you do not say that X----- delivers the discards to the teachers and children's groups. From the context of your letter, as we understand it, the teachers and children's groups pick-up the discards at the X----- warehouse. Thus, we will first discuss the application of tax to retail sales and, thereafter, services which are a part of retail sales.

RETAIL SALES

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property in this state, unless the sale is specifically exempt by statute. A retailer includes every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others. (Rev. & Tax. Code § 6015.) Although sales tax is imposed on the retailer, the retailer may collect reimbursement from his or her customer, if the contract of sale so provides. (Civil Code § 1651.1.) Gross receipts means the total amount of the sale price of the retail sales of retailers, valued in money, whether received in

money or otherwise, without any deduction for the cost of property sold. Gross receipts include the cost of the materials used, labor or service cost, interest paid, losses or any other expense. (Rev. & Tax. Code § 6012.) Tangible personal property means personal property which may be seen, weighed, measured, felt, or touched, or which is in any manner perceptible to the senses. (Rev. & Tax. Code § 6016.) Sale means and includes any transfer of title or possession, exchange, or barter, of tangible personal property for consideration. (Rev. & Tax. Code § 6006.) 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. (Rev. & Tax. Code § 6007.)

Since there is no general tax exemption for sales by nonprofit business organizations in this state, a sale occurs when a seller transfers title or possession to tangible personal property for consideration. Tax applies to the sale price of such property, unless the sale is specifically exempt by statute, or is otherwise excluded from taxation. Sales tax is measured by the gross receipts from a retail sale of tangible personal property. The retailer may collect sales tax reimbursement from the customer if the contract of sale so provides.

Based on the facts provided, the discards can be seen, weighed, measured, felt, or touched, which makes them tangible personal property. When X----- transfers title or possession of the discards to teachers or children's groups for a fee, whether that fee is based on volume or value, the payment of the fee in return for the discards is viewed as consideration for a transfer of title to the discards. Thus, a taxable retail sale of the discards occurs when they are transferred to teachers or children's groups for a fee. X----- may collect sales tax reimbursement from its customers if the contract of sale so provides.

SERVICES THAT ARE PART OF A SALE

Except where excluded by statute, sales tax is imposed on all charges related to the sale of tangible personal property. Thus, the gross receipts of sale include any handling services a part of the sale. Sales and Use Tax Annotation 295.1690 (8/16/78) explains, in pertinent part, that:

" 'Services that are a part of the sale' include any the seller must perform in order to produce and sell the property, or for which the purchaser must pay as a condition of the purchase and/or functional use of the property, even where such services might not appear to directly relate to production or sale costs."

This means that if the service must be performed or paid for by the purchaser in order to purchase or use the property, then the service is part of a sale. Based on the facts, X----- collects the donations of industrial discards from the industries which donate them to X----- - and, thereafter, X----- packages the discards in specific quantities in order for the teachers and children's groups to reuse them. We conclude that X----- activities are services the seller must perform in order to sell the discards. Accordingly, the gross receipts of sale of the discards includes the cost of X----- collecting and packaging services.

Based on the foregoing discussion, you will need to contact your local district office to obtain a seller's permit for X----- . That office is:

San Jose District Office
100 Paseo de San Antonio, Room 307
San Jose. CA 95113-1477

The telephone number for the San Jose Office is (408) 277-1231. We enclose a copy of Board of Equalization Pamphlet No., 73, entitled "Your California Seller's Permit."

Enclosed is a copy of Board of Equalization Pamphlet No. 18, which is entitled "Tax Tips for volunteer and Nonprofit Fund Raising Organizations." If our understanding is incorrect, or you have further questions, feel free to write again.

Sincerely,

Pat S. Hildebrand
Staff Counsel

PSH:cl

Enclosures

cc: San Jose District Administrator