

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition for Redetermination of SCHOLASTIC BOOK CLUBS, INC.
under the Sales and Use Tax Law*

Appearances:

For Petitioner: Mr. George Isaacson
Attorney
Brann & Isaacson, LLP

*For Sales and Use
Tax Department:*

Ms. Janice Thurston
Senior Tax Counsel

For Appeals Section:

Mr. John Abbott
Supervising Tax Counsel

MEMORANDUM OPINION

This opinion is on a petition for redetermination in the amount of \$166,082.71 in tax for the period January 1, 1990 through March 31, 1993. The Board heard this case on July 29, 1999, in Sacramento, California.

Petitioner, Scholastic Book Clubs, Inc., is a Missouri corporation that sold books to students and teachers (and school librarians) throughout the United States, including California. It shipped the books sold by common carrier from its distribution center in Missouri to the teachers at their schools, and collected California use tax on its sales to California students and teachers. For purposes of use tax collection, the teachers acted as agents for petitioner. They received mail order catalogs from petitioner, distributed order forms to their students, collected orders and payments, and sent the orders and payments to petitioner. (See *Scholastic Book Clubs, Inc. v. State Bd. of Equalization* (1989) 207 Cal.App.3d 734, 737; Rev. & Tax. Code, sec. 6203, subd. (c)(2)).

When students and teachers purchased books from the mail order catalogs, the teachers who sent in the orders earned bonus points that were later redeemable for books and other educational items, either from petitioner's book catalogs or its bonus catalogs. Petitioner awarded the bonus points at one point or more per dollar of orders placed, kept track of each teacher's bonus points, and provided the bonus catalogs. When the teachers accumulated sufficient bonus points to qualify for the items redeemed, petitioner shipped the bonus point items to the teachers at their schools.

During the prior audit period at issue in *Scholastic Books, Inc.*, supra, petitioner placed no restrictions on the teachers' use of items purchased with bonus points; the items could be used in the classrooms or for the teachers' personal use. Also, the types of items available through bonus points included items intended for personal use. However,

during the current audit period petitioner did place restrictions on the teachers' use of the bonus point items; they were intended for use exclusively in the classrooms (or school libraries). On page 2 of the bonus catalogs, it stated:

“Scholastic Bonus Points and Classroom Bonuses are awarded for the exclusive and mutual educational benefit of all participating students, their teachers, classrooms, and schools.”

Petitioner's bonus point program is a sales promotion plan in which premiums consisting of bonus books and other educational items are provided for use in the classroom or school library by students and teachers. Petitioner incurs no expense in relation to the bonus items until the teachers order the items.

Title 18, California Code of Regulations, section 1671, Trading Stamps and Related Promotional Plans, paragraph (b)(2), describes a promotional plan in which the “retailer incurs no expense with relation to the premium until such time as the customer obtains the premium. The retailer purchases the premium and delivers it to his customer in exchange for the required quantity of indicia.” Under this type of promotional plan, the application of sales and use tax is described in paragraph (e) of the regulation:

“(e) PLAN DESCRIBED IN (b)(2).

“(1) CASH DISCOUNT. The retailer incurs the expense with relation to the premium at the time he delivers the premium to his customer. The retailer is entitled to a cash discount deduction at the time he delivers the premium to his customer. The amount of the cash discount deduction shall be the selling price of the premium as determined by Paragraph (e) (2) below

“(2) SALE OF PREMIUM. The delivery of premium merchandise by the retailer to his customer in exchange for a prescribed number of units of indicia constitutes a taxable retail sale of the premium merchandise. . . The selling price is the sales price to the retailer of the premium merchandise.”

Under this provision, the retailer is liable for tax on its sales of premium merchandise measured by its cost to purchase the merchandise, but the tax is offset by the cash discount on those sales, equal to the measure of tax on the sales.

OPINION

We conclude that the petition should be granted. During the audit period, petitioner did not provide compensation, in the form of bonus items, to the teachers in return for them acting as its agents. Rather, petitioner engaged in a promotional plan in which the teachers received premiums in exchange for the bonus points the teachers had accumulated by placing orders with petitioner. Petitioner expressly limited the use of the bonus items to classroom and school uses, and not to personal uses by the teachers. Tax applies as described in Regulation 1671, paragraph (e)(2) above.

Done at Sacramento, California, this 7th day of October, 1999.

Dean F. Andal, Member
Claude Parrish, Member
Marcy Jo Mandel, Member*

* For Kathleen Connell, per Government Code section 7.9.