

SALES AND USE TAX REGULATIONS

Regulation 1597. PROPERTY TRANSFERRED OR SOLD BY CERTAIN NONPROFIT ORGANIZATIONS.

Reference: Sections 6359.3, 6360, 6361, 6361.1, and 6370, Revenue and Taxation Code.
Scholastic Book Clubs, Inc. v. State Board of Equalization (1989, 207 Cal. App. 3d 734)

(a) IN GENERAL. Sections 6359.3, 6360, 6361, 6361.1 and 6370 of the Revenue and Taxation Code provide that certain organizations are consumers and not retailers of specified kinds of tangible personal property under certain conditions. The subsections which follow describe the organizations and the kind of tangible personal property involved.

(b) FLAGS SOLD BY NONPROFIT VETERANS' ORGANIZATIONS. Any nonprofit veterans' organization is a consumer of and shall not be considered a retailer of flags of the United States which it sells where the profits are used solely and exclusively in furtherance of the purpose of the organization.

(c) PRISONERS OF WAR BRACELETS TRANSFERRED BY CHARITABLE ORGANIZATIONS. Any charitable organization qualifying for the welfare exemption from property taxation under Section 214 of the Revenue and Taxation Code is the consumer of bracelets designed to commemorate American prisoners of war, which it distributes, whether or not a contribution is made to such organization, where the profits are used solely and exclusively in furtherance of the purposes of such organization.

(d) HANDCRAFTED OR ARTISTIC TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN QUALIFIED ORGANIZATIONS. Any organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A.); which, as its primary purpose, provides services to individuals with developmental disabilities or, effective August 3, 1995, to children with severe emotional disturbances, and which does not discriminate on the basis of race, sex, nationality, or religion is the consumer and not the retailer of any tangible personal property sold by them if all of the following conditions are met:

(1) The tangible personal property is of a handcrafted or artistic nature and is designed, created, or made by individuals with developmental disabilities or, effective August 3, 1995, by children with severe emotional disturbances, who are members of, or receive services from, the qualified organization.

(2) The price of each item of tangible personal property sold does not exceed twenty dollars (\$20), or ten dollars (\$10) if sold prior to August 3, 1995.

(3) The qualified organization's sales are made on an irregular or intermittent basis.

(4) The qualified organization's profits from the sales are used exclusively in furtherance of the purposes of the organization.

(e) FOOD PRODUCTS, NONALCOHOLIC BEVERAGES AND OTHER TANGIBLE PERSONAL PROPERTY SOLD BY NONPROFIT YOUTH ORGANIZATIONS.

(1) A qualified youth organization is the consumer and not the retailer of food products, nonalcoholic beverages, and tangible personal property created by members of the organization which are sold on an irregular or intermittent basis provided the profits from such sales are used solely and exclusively in the furtherance of the purpose of the organization.

(A) "Qualified youth organization" means and includes:

1. any nonprofit organization which qualifies for tax-exempt status under Section 501(c) of the Internal Revenue Code (26 U.S.C.A.); which provides a supervised program of competitive sports for youth or promotes good citizenship in youth as its primary purpose; and which does not discriminate on the basis of race, sex, nationality, or religion, or

2. any youth group or club sponsored by or affiliated with a qualified educational institution, including but not limited to any student activity group, e.g., debating team, swimming team, band, or choir.

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(B) "Qualified educational institution" means and includes:

1. any public elementary, secondary, or vocation-technical school which provides education for either kindergarten; grades 1 through 12, inclusive; or college or university undergraduate programs, or any part thereof, or

2. any nonprofit private school which provides education programs for either kindergarten; grades 1 through 12, inclusive; or college or university undergraduate programs, or any part thereof. Nonprofit private school educational programs must meet the requirements of the State Department of Education and must satisfy the requirements of state and local laws governing private educational institutions in effect on January 1, 1990. The term does not include a nonprofit private school which otherwise qualifies but which discriminates on the basis of race, sex, nationality, or religion. For example, a youth group sponsored by a private school which has enrollment open only to females is not a "qualified youth organization."

(C) "Irregular or intermittent" is defined to mean sales made at particular events, such as fairs, galas, parades, scout-a-ramas, games, and similar activities, which are not conducted on a regularly scheduled basis. Sales made at refreshment stands or booths at scheduled events of organized youth sports leagues are considered made on an "irregular or intermittent" basis; however, sales made in storefront or mobile retail outlets which ordinarily require local business licenses do not qualify.

(2) The following organizations are "qualified youth organizations" and are consumers, not retailers, of tangible personal property under the circumstances described in paragraph (e)(1):

Little League, Bobby Sox, Boy Scouts, Cub Scouts, Girl Scouts, Campfire, Inc., formerly Campfire Girls, Young Men's Christian Association, Young Women's Christian Association, Future Farmers of America, Future Homemakers of America, 4-H Clubs, Distributive Education Clubs of America, Future Business Leaders of America, Vocational Industrial Clubs of America, Collegiate Young Farmers, Boys' Clubs, Girls' Clubs, Special Olympics, Inc., American Youth Soccer Organization, California Youth Soccer Association, North, California Youth Soccer Association, South, and Pop Warner Football.

(f) TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN NONPROFIT ORGANIZATIONS. The following organizations are consumers and not retailers of any tangible personal property sold by them if the profits from such sales are used exclusively in the furtherance of the purposes of the organization:

(1) 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.

(2) Nonprofit associations commonly called Friends of the Library, and equivalent organizations performing auxiliary services to any library district, municipal library, or county library in the state, which are authorized to operate within the library by the governing authority of the library.

(3) Nonprofit parent cooperative nursery schools.

(g) RESALE CERTIFICATES: OBLIGATIONS OF PERSONS WHO SELL TO CONSUMERS. An organization classed as a consumer under this regulation may not give a resale certificate with respect to the property it transfers.

All persons, other than organizations classed as consumers, who make sales of tangible personal property not otherwise exempt, should report tax on their sales unless the purchasers furnish resale certificates which can be accepted in good faith.

It will be presumed that all sales of tangible personal property not otherwise exempt, by organizations not classed as consumers, for delivery in this state to purchasers who do not furnish resale certificates which the seller accepts in good faith are subject to sales tax or that the seller is obligated to collect use tax from the purchasers.

(h) TAXABLE SALES OF TANGIBLE PERSONAL PROPERTY BY OR THROUGH NONPROFIT ORGANIZATIONS. A nonprofit organization is treated as a consumer of tangible personal property if it may sell under circumstances described in subdivisions (d), (e) and (f) of this regulation. In other cases, a nonprofit organization is regarded as a retailer of property it sells to consumers, or it is regarded as an agent of the companies which furnish the property to it for delivery to consumers.

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

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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 supplier has been classified by the Board as a retailer under Revenue and Taxation Code Section 6015 or the nonprofit organization is classified under subdivisions (d), (e) and (f) of this regulation.

If the supplier is a 6015 retailer, the supplier must pay the tax and the organization does not need a seller's permit. The measure of tax is the amount charged to the consumer. When this price is unknown by the supplier, tax will apply to the suggested retail selling price. If the nonprofit organization is classified as a consumer under subdivisions (d), (e) and (f) of this regulation, the supplier will calculate tax measured by the selling price to the nonprofit organization.

- History:* Adopted October 6, 1970, effective October 9, 1970.
Amended December 15, 1971, applicable on and after December 15, 1971.
Amended February 16, 1972, effective March 25, 1972.
Amended February 7, 1973, effective March 16, 1973.
Amended December 18, 1974, effective January 26, 1975. Added (d) and reference to Section 6361 of Revenue and Taxation Code and clarified (e).
Amended May 21, 1975, effective June 29, 1975. Excluded state and its political subdivisions from (d).
Amended September 28, 1978, effective November 18, 1978. Adds (e); rennumbers (e) to (f), and amends (f) to refer to sales of tangible personal property rather than a detailed list of specific types of property.
Amended February 6, 1980, effective March 29, 1980. Added subsection (f); relettered former (f) to (g) and substituted "this regulation" for subsection letters.
Amended May 6, 1986, effective July 6, 1986. In subdivision (d), amended regulation to limit organizations covered by regulation and made the organizations consumers of certain items of tangible personal property.
Amended June 17, 1987, effective September 19, 1987. In subdivision (d), added to the list of nonprofit youth organizations identified by Legislature as consumers, not retailers, of certain property sold under specified conditions.
Amended August 24, 1988, effective November 17, 1988. In subdivision (e) (3) added nonprofit parent cooperative nursery schools to list of organizations which qualify as consumers of tangible personal property.
Amended April 5, 1989, effective June 17, 1989. The regulation title was shortened to eliminate unnecessary verbiage. Subdivision (a) was amended to add section 6361.1 added to the Revenue and Taxation Code by Chapter 711 (1988). Subdivisions (b), (d) and (e) were amended to replace the word "transferred" with the word "sold" to eliminate confusion. Subdivision (d) (1) was amended to explain that a nonprofit youth organization is a consumer and not a retailer of certain items sold in a specified manner for a defined purpose; (d) (1) (A) defines "qualified youth organization"; (d) (1) (B) relocates the definition of "irregular or intermittent". Subdivision (d) (2) (C) adds specified qualified organizations and (d) (3) adds the Board's authority to approve certain youth organizations not listed in the statute (Chapters 709, 710, 711 (1988)).
Amended January 8, 1991, effective March 16, 1991. Subsection (a) deleted reference to Section 6368.1 which was repealed. Subsection (d) redefined "qualified youth organization" and added the definition of "qualified educational institution". Subsection (d) (3) was deleted. Subsection (e) (1) added the word "incorporated".
Amended November 30, 1993, effective March 5, 1994. Amended subdivision (g) to add the factors to establish the presumption that a nonprofit organization is buying and selling tangible personal property on its own account and added clarifying language regarding an organization's permit status and calculation of tax when classified as a consumer under subdivisions (d) and (e).
Amended December 7, 1994, effective July 15, 1995. Added new subparagraph (d) to provide guidance to nonprofit organizations selling handcrafted tangible personal property as to when they are regarded as the consumers of such property, as required by Statutes 1993, Chapter 653.
Amended April 23, 1996, effective May 23, 1996. Subdivision (d) amended to add the provisions of Chapter 290 of Statutes of 1995 regarding the sale of handcrafted or artistic tangible personal property by children with severe emotional disturbances. Subdivision (f)(3) was amended to remove an obsolete effective date.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.

2. Organizations Whose Sales Are Generally Not Taxable

The nonprofit organizations listed in this chapter are considered to be end users of merchandise they sell, rather than retailers. Consequently, they are generally not required to hold state seller's permits or to report tax on their sales (for some organizations, only specific sales qualify for this exclusion). The organization's sales profits must, unless otherwise noted, be used exclusively to further the purposes of the organization.

Although your organization's sales may not be subject to tax, your purchases are generally taxable, and you cannot give resale certificates for them. Since tax must generally be reported by the business selling to your organization, you can expect to pay tax when you buy merchandise. (If you work with a fund-raiser company, different regulations may apply — please see page 10 for details.)

Nonprofit Parent-Teacher Associations (PTA) chartered by the California Congress of PTA, Incorporated, and equivalent organizations authorized by school authorities to perform the same type of service for public or private schools, are considered to be users of products they sell. The profits from the sales must be used exclusively to further the organization's purpose.

Please note: Connection with a school does not automatically make a group equivalent to a chartered PTA. To be considered equivalent, the group must meet all of the following conditions:

- It must be a nonprofit organization that includes parents;
- The group's objectives must include enhancing the welfare of all of the students in the school, and developing better communication between parents and school authorities; (Note: Groups, such as athletic booster clubs, whose efforts are directed toward a select group of students, rather than all students, are not considered PTA-equivalent organizations.)
- The group must be authorized to operate in the school by the school's governing authority;
- The profits from the group's sales must be used exclusively to further the purpose of the organization.

Qualified youth organizations are considered to be retailers in some circumstances, and users in others. To qualify as an end user, your group must be:

- A nonprofit organization that qualifies for tax-exempt status under Internal Revenue Code Section 501 (c), whose primary purpose is to provide a supervised program of competitive sports for youth or to promote good youth citizenship. The

group must not discriminate on the basis of race, sex, nationality, or religion; or

- A youth group or club sponsored by, or affiliated with, a qualified educational institution, including student activity groups: debating teams, swimming teams, bands, choirs, and so forth.

Most public and nonprofit private schools, with the exception of those that discriminate on the basis of race, sex, nationality, or religion, are considered "qualified educational institutions." For more information, you may wish to obtain a copy of Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*, from our Information Center (see page 26).

If your youth group does not meet the requirements listed, it is considered to be the retailer of products it sells. Please see the next chapter, "General Sales and Use Tax Reporting Requirements," for further information.

Nontaxable Sales. Qualified youth groups are considered to be users of food products, nonalcoholic beverages, and items made by members of the organization, which are sold on an irregular or intermittent basis. The proceeds from sales of these items must be used exclusively to further the group's purpose.

Please note: Sales made in storefront or mobile retail outlets that normally require local business licenses do not qualify as intermittent or irregular sales.

Taxable Sales. Youth groups selling other items are considered to be retailers of those products. Sales of these items — t-shirts, wrapping paper, mugs, and so forth — are taxable. The sales must be reported as described in chapter 4, "General Sales and Use Tax Reporting Requirements," beginning on page 11. Your group may need a permanent seller's permit, as discussed in that chapter.

A public or private school, school district, student organization, or county office of education is considered to be the user of yearbooks and catalogs it sells. The yearbooks or catalogs must be prepared for or by the seller and distributed to students. Profits from such sales are not required to be used for any particular purpose.

Nonprofit associations commonly called Friends of the Library, or equivalent organizations, are considered to be users of items they sell. The organization must perform auxiliary services to a library district, municipal library, or county library in the state, as authorized by the library's governing authority. Profits from the organization's sales must be used exclusively to further the purposes of the organization.

3. Organizations Working with Fund-raiser Companies

Nonprofit organizations and volunteer groups often contract with fund-raiser companies to help them raise money. Whether your organization is responsible to report and pay sales tax depends on how the sales are handled.

■ **Organization considered a sales agent, permit not required**
Generally, if your organization's members or representatives solicit orders, collect payments, and distribute merchandise for a fund-raiser company or other similar supplier, they are considered agents of that company. As a result, your organization is not required to obtain a seller's permit for those activities. The fund-raiser company is responsible to report and pay any tax due, based on the retail selling price of the merchandise.

Please note: Although your organization's sales may generally not be taxable (as described in chapter 2), sales you make as the agent of a company are not eligible for that special consideration. The company is responsible for any tax due.

■ **Organization considered a retailer, must obtain seller's permit**
When working with a fund-raiser company, your organization is considered to be a retailer when it buys and sells items for its own direct benefit. You are responsible to obtain a seller's permit and pay any tax due if your organization

- Executes a contract with the supplier clearly stating that the organization will purchase and resell merchandise;
- Solicits orders from the public in its own namep;
- Collects the sales price from customers in its own name; and
- Is responsible for and pays the supplier for the merchandise (or receives the products as a donation).

Exceptions. When selling in this manner, your organization is generally not responsible to obtain a seller's permit and report tax if:

- The organization is a PTA, Friends of the Library group, nonprofit parent cooperative nursery school, or qualified youth organization (under certain circumstances), as described in chapter 2, beginning on page 5.
- The Board considers the fund-raiser company or supplier to be the retailer of the products you sell. In this case, the company is responsible for the tax. If you are unsure who is obligated to report and pay tax on your sales, please contact us for assistance (see chapter 8).

For more information, you may wish to obtain a copy of Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*, from your local Board office.

Nonprofit Parent-Teacher Associations

Nonprofit Youth Organizations

Schools Selling Yearbooks and Catalogs

Friends of the Library

For more information, you may wish to obtain a copy of Regulation 1597, *Property Transferred or Sold by Certain Nonprofit Organizations*.

For information on taxable sales and seller's permit requirements, please see the next chapter, "General Sales and Use Tax Reporting Requirements."