



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

April 16, 2001

Ms. Renee Schertzer
WASBO ASB Committee Co-Chairperson
North Kitsap School District
18360 Caldart Avenue Northeast
Poulsbo, Washington 98370

RE: Washington Association of School Business Officials
Registration No. 601 220 600

Dear Ms. Schertzer:

This letter replies to your request on behalf of the above referenced taxpayer and incorporates the facts that you provided during our phone conversation on March 20, 2001. You have asked whether the sales tax exemption for fund-raising activities applies when the Associated Student Body (ASB) for a school publishes and sells yearbooks, cookbooks, literary books and magazines.

Generally, an ASB selling yearbooks to students qualifies for the fund-raising activities exemption, but only if the publishing and sales are not performed in a way that the activities become a business operation performed at a regular place of business during regular hours. When the activities qualifies, the ASB does not pay retail sales tax to the printer. Instead, the ASB provides the printer with a properly executed resale certificate.

Facts:

The ASB produces and sells one school yearbook each year. The students place yearbook orders with students or other volunteers during the first month of the school year. A table is set-up at registration to take orders from students. During the months of August and September, the students can visit a central point in the school manned by volunteers to order and/or pay for their yearbooks. This central point for contact is not the ASB school store. The students produce the yearbook over the course of the school year as part of a class or both a class and on club time after school with a student advisor. The student advisor may be paid a stipend.



The students solicit merchants and others for yearbook advertisements. The ASB places its order for the yearbooks with the printer, which generally includes additional yearbooks. After the yearbook is prepared, the materials are turned over to the printer. The yearbooks are delivered to the ASB in May or June. Volunteers deliver the books and sell the additional yearbooks to students that failed to order their books in August or September. The printed yearbooks are held and sold from a central place within the school, that is not the school store, during the last month of the school year.

The ASB may also produce a cookbook during the year and/or a literary book or magazine. Again students and volunteers are used to produce the books; however, the means of taking orders and selling these books can be very different from the yearbooks. Students and volunteers may agree to sell a certain number of these books, events may be planned around selling the books, classes may be solicited for purchases, or the books may be sold from a central location in the school.

Law:

A nonprofit organization does not collect retail sales tax on amounts earned from fund-raising activities, because the sales are exempt from retail sales tax. RCW 82.08.02573. Purchases made for resale are not subject to retail sales tax if the purchaser provides a resale certificate, because the purchase is not a "retail sale." RCW 82.04.050.

Analysis:

The ASB is a nonprofit organization as described under RCW 82.04.3651. The issue is whether or not the selling of yearbooks is a fund-raising activity.

RCW 82.04.3651 provides that a fund-raising activity does not include "the operation of a regular place of business in which sales are made during regular hours...or a regular place of business from which services are provided or performed during regular hours."

The determination of what constitutes a regular place of business and regular hours is based upon the nature, timing, and frequency of the business activity performed by the nonprofit organization. When considering publishing activities for tax purposes, we must not base our decision upon the content of a publication. See, Arkansas Writers' Project, Inc. v. Raglund, 481 U.S. 221 (1987). We must instead focus upon the general nature of the item and how it is produced and sold. Thus, we do not distinguish a yearbook, from a cookbook, or literary book. These are all books and it is the facts about how each book is produced, the frequency of these activities, and how the book is sold that will determine the tax treatment of the book.

We agree that the production of one yearbook a school year in the manner described above is a fund-raising activity. It is not one fact that convinces us that yearbook sales are not part of the operation of a regular place of business, but all the facts combined.

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The limited market, the use of volunteers, the limited time span for taking orders, the frequency of the selling activities, and the way the ASB maintains the yearbook sales separate from other ASB selling activities convinces us that the selling of yearbooks, as described above, is a fund-raising activity.

We cannot provide a definitive response regarding the selling of cookbooks, literary books and magazines by the ASB. If these books, in addition to the yearbooks, are produced by volunteers on an infrequent basis (no more than two a year) and not sold in stores (either on or off campus), then the transactions will more than likely be viewed as fund-raising activities.

This ruling is binding upon the ASB(s) represented by Ms. Schertzer and the Department of Revenue under the facts presented. It will remain binding until: the facts change, the law changes (either by statute or court decision), the applicable rule(s) are amended, the Department of Revenue publicly announces a change in the policy upon which this ruling is based, or Ms. Schertzer, or a named representative of the ASBs Ms. Schertzer represents, is notified in writing that this ruling is not valid. An ASB that is bound by this ruling, or consents to be bound by this ruling in the future, must present this letter along with an affidavit consenting to or ratifying Ms. Schertzer's representation in order to claim reliance upon the ruling's determination.

If you have any further questions, please do not hesitate to write.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Ratcliffe", with a long horizontal flourish extending to the right.

Ed Ratcliffe
Tax Policy Specialist