

Private Letter Ruling 03-008

Redacted Version

Taxability of Purchases Made by Individual Public Schools

July 3, 2003

This private letter ruling addresses whether or not the application of the exclusion from the sales tax that is granted the state and its instrumentalities under La. Rev. Stat. Ann. § 47:301(8) (West 2003) also applies to purchases made by individual schools.

Facts

Normally, a public school will establish an account with Company A to purchase office supplies and equipment, such as paper, pens, erasers, binders, paper clips, fax machines, copy machines, and computers. During the initial creation of the account, exemption documentation is received and processed. If the exemption document is deemed “valid,” the account is flagged as “exempt” and a special exemption card is issued to the organization identifying the organization name and their account number. This card is then presented for future purchases to be made tax-free at store locations.

For store sales, an employee of the public school often presents a credit card for payment at the register. The Visa or MasterCard presented is in the public school’s name.

Issues

1. Can an individual public school issue a valid exemption certificate or does it have to be completed by the school board?
2. Can an individual public school make exempt purchases of office supplies and equipment or do the purchases need to be billed directly to the school board? Company A’s accounts have a “bill-to” and a “ship-to” name and address. For delivery sales, must the invoice reflect the school board as the “bill-to” entity, or is billing the individual public school acceptable?
3. When a credit card is used to pay at the store register, does it need to be in the name of the school board for it to be a valid exempt transaction or can the credit card be in the name of the individual public school?

Discussion

“Person” does not include State and its Instrumentalities

The state and its entities are not defined as “persons” under § 47:301(8)(c), and thus, are excluded from payment of sales and use tax on their purchases. Section 47:301(8)(c) reads:

For purposes of the payment of the state sales and use tax and the sales and use tax levied by any political subdivision, “person” shall not include this state, any parish, city and parish, municipality, district, or other political subdivision thereof, or any agency, board, commission, or instrumentality of this state or its political subdivisions.

The intent behind this exclusion is to prevent expenditures made with public funds from being taxed at the state, political subdivision, agency, or instrumentality level.

This exclusion from person in § 47:301(8)(c) specifically includes political subdivisions; which are defined in La. Const. art. VI, §44 (2) as:

“Political subdivision” means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

Because “political subdivision” includes school boards, it is clear that these entities are included in the exclusion under § 47:301(8)(c). Company A’s questions involve whether or not purchases by individual public schools are also excluded from the sales and use tax since these entities are not specifically listed in § 47:301(8)(c).

1983 and 1985 Attorney General Opinions

Company A’s representative cited two prior opinions by the Louisiana Attorney General’s Office and inquired whether or not these opinions control whether or not individual public schools can make tax-free purchases. The attorney general opinions cited are 83 Op. Att’y Gen. La. 898 (1983) and 84 Op. Att’y Gen. La. 811A (1985).

The first opinion declared that the exemption for school boards does not apply to purchases made by individual schools unless directly paid for by the school board. However, this ruling was overruled by 84 Op. Att’y Gen. La. 811 (1984), which states that purchases made by individual schools from funds received directly from school boards should not be subject to the state sales tax. The opinion notes that the exemption is aimed at allowing schools to operate free from the imposition of a state sales tax. Thus, even if individual school purchases are not channeled through school board central accounts, the purchases should still be tax-free.

The second opinion cited, 84 Op. Att’y Gen. La. 811A (1985), amended the response provided in 84 Op. Att’y Gen. La. 811 (1984), but only to the extent that the original version was inconsistent with the revised opinion. The revision ruled that purchases made by individual schools from self-generated funds are not eligible for the exemption. The authority for the revised opinion was a Department of Revenue directive interpreting La. Rev. Stat. Ann. § 47:305.29.¹

84 Op. Att’y Gen. La. 811 (1984) and 84 Op. Att’y Gen. La. 811A (1985), created a situation where purchase made with funds received directly from school boards by individual schools were not subject to the state sales tax whereas purchases made with self-generated funds were subject to tax. Developments in the early 1990s eliminated this bifurcation so that all purchases made by individual schools, regardless of the source of the funds, are considered to be made with public funds and are tax-free.

Developments in the Early 1990s

The finding in 84 Op. Att’y Gen. La. 811A (1985) that purchases made by individual schools from self-generated funds was superseded by two developments occurring in the early 1990s. The first change was the Department of Revenue’s change in policy due to the repeal of § 47:305.29. The second change was 1990 La. Acts 1066, which enacted La. Rev. Stat. Ann. § 17:414.3 (West 2003) concerning school funds and their management and expenditure by school principals.

The first and more notable change was the Department of Revenue’s change in policy due to the passage of 1991 La. Acts 1029. The effect of this Act was to repeal § 47:305.29 and enact § 47:301(8)(c), which granted the state and its instrumentalities an *exclusion* from payment of sales and use tax. An exclusion is protected from suspension, and in the case of a legal dispute, the state bears the burden of showing why an exclusion does not apply. By providing the state and its instrumentalities with this heightened assurance that governmental purchases would remain tax-free, the Legislature evidenced its intent for a broader application of the protection than was earlier granted under the exemption.

¹ §47:305.29 was enacted by 1980 La. Acts 616 and exempted the state and its instrumentalities from the payment of sales tax on its purchases.

After the 1991 legislative change, the department's directive interpreting the repealed § 47:305.29 was no longer enforced. Because this directive served as the foundation for the amended opinion in 84 Op. Att'y Gen. La. 811A (1985), that ruling was tacitly overruled and the source of funds no longer determined the tax status of individual schools' purchases. Without this distinguishing factor, the general rule announced in 84 Op. Att'y Gen. La. 811 (1984) was reinstated, which provides: "It is our opinion that funds used to pay for the purchases are school board funds whether disbursed by the school board directly or by the individual schools."

The second development that impacted the treatment of schools' self-generated funds was the enactment of § 17:414.3 and the interpretation given that statute in Attorney General opinions. This statute was enacted by 1990 La. Acts 1066 and addresses self-generated school funds and their management and expenditure by school principals. The funds placed in this account do not include the money provided by the state or the city or parish school system for support of the regular instructional program or the school facility.

Attorney General Opinions interpreting the scope of this Act state that the funds placed in these individual school accounts are "public funds." Indeed, the statute provides that while the funds in these accounts are not deposited into an account under school board control, that an annual accounting must be made to the school board superintendent. Thus, the school board, as the regulator of the functions that take place within the school system per La. Rev. Stat. Ann. § 17:81(A) (West 2003), plays a role in assuring that the monies in these funds are expended for a public use. (See 93 Op. Att'y Gen. La. 456.)

Ruling

Due to the legislative and policy changes that occurred in the 1990s, the earlier holding in 84 Op. Att'y Gen. La. 811A (1985) is no longer controlling in this area. After the passage of an exclusion for the state and its entities, the directive upon which 84 Op. Att'y Gen. La. 811A (1985) was based was no longer enforced. Additionally, § 17:414.3, which was passed after the issuance of 84 Op. Att'y Gen. La. 811A (1985), clarified the administration of school's self-generated funds' management and expenditure. Interpretations of that statute by the Attorney General's Office declared that these specific funds are "public funds." (See 00 Op. Att'y Gen. La. 166 and 92 Op. Att'y Gen. La. 79.)

Purchases, whether made by school boards or made by individual schools, serve the essential functions to equip and supply school classrooms and offices. Previous Attorney General Opinions have deemed that the funds used by individual schools, regardless of their source, are public funds and that the schools' purchases should be tax-free. Therefore, individual schools' purchases are also accorded the same exclusion from the payment of the sales and use tax that is granted to the school board to which they report.

In reply to the first issue, an individual public school may issue a valid exemption certificate. The certificate does not have to be completed by a school board because all funds expended by the individual school are considered public funds. The current exemption certificate, R-1056, reflects this conclusion, for it specifically provides a category for "parish school board or public school" as one of the possible boxes that public agencies with legal status to make tax-free purchases may check when completing the form.

The answer to the second issue is similar. The purchases made by an individual school do not need to be billed directly to the school board. The "bill to" and "ship to" name and address may be to the individual public school. Since purchases made by individual schools are made with public funds, there is no need for purchases to be routed through school board central accounts in order for the exclusion to apply.

As for issue three, payment for office supplies using a credit card issued in the individual school's name would qualify for the exclusion. It is not necessary that the credit card be issued in the name of the school board.

Please note that while individual schools may make purchases tax-free, organizations affiliated with the public school do not enjoy the same tax-exempt status. The types of affiliated organizations not allowed the exclusion include parent teacher associations (PTAs), parent teacher organizations (PTOs), alumni associations, and athletic associations.

Summary

In summary, Company A may accept exemption certificates filled out by individual schools. These schools may make exempt purchases of office supplies and equipment and these purchases can be shipped to and billed to the school. A credit card with the school's name may also be accepted for valid tax-free payments.

If you have any questions or need additional information, please contact the Policy Services Division at 225.219.2780.

Cynthia Bridges
Secretary

By: _____
Christina L. Fletcher
Attorney
Policy Services Division

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