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**STATE BOARD OF EQUALIZATION**  
916-445-5550

November 12, 1991

[X]

Re: [X]

Dear Ms. [X]:

We have received a letter dated November 6, 1991 from the U.S.D.A. regarding the application of sales tax to purchases made with food stamps. Although the U.S.D.A. may have also contacted you or [Y]'s or both, I enclose a copy of the letter for your information. The U.S.D.A. now agrees that tax applies in the manner set forth in my letter to you dated November 1, 1991.

Sincerely,

David H. Levine  
Senior Tax Counsel

DHL:cl

Enclosure



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**STATE BOARD OF EQUALIZATION**

916-445-5550

November 1, 1991

[X]

Re: [X]

Dear Ms. [X]:

This is in response to your letter dated October 3, 1991. One of your members, [X] has brought to your attention a problem with respect to the application of sales tax when otherwise taxable items are purchased with a combination of food stamps and manufacturer's coupons. You ask for clarification of the State's position.

You explain that a [X] customer recently wrote a letter of complaint to the U.S. Department of Agriculture because she was charged sales tax on the amount of a manufacturer's coupon used in a food stamp purchase. She was not, however, charged tax on the amount of the purchase which was paid for with food stamps. [X] received a letter from the U.S.D.A. stating that [X] may not charge tax on manufacturer's coupons used for purchases with food stamps. However, it is your understanding that California law requires the payment of sales tax on the amount of otherwise taxable purchases paid for with manufacturer's coupons.

The relevant federal regulation on this issue is set forth in Section 272.1 of Title 7 of the Code of Federal Regulations. Our understanding of the U.S.D.A. position is that subdivision (b) of Section 272.1 explicitly states that the only instance whereby sales tax may be charged is if the purchaser pays for eligible food items with a combination of cash and food stamps. The U.S.D.A. concludes that since there is no mention of manufacturer's coupons in the regulation and since manufacturer's coupons are not cash, the grocer may not charge a food stamp user sales tax reimbursement when that person presents a manufacturer's coupon along with food stamps.

This is not a situation where the federal regulation is unclear. The wording of the regulation is, as indicated by the U.S.D.A., explicit. However, the regulation does not state what the U.S.D.A. indicates. Rather, it states:

“Where the total value of groceries being bought by the recipient is larger than the amount of [food stamp] coupons being presented by the recipient, only the portion of the sale made in exchange for food stamps must be exempt from taxation in order for a State to satisfy the requirements of this provision. Although a food stamp recipient may use a combination of cash and food stamps in making a food purchase, only the dollar amount represented by the food coupons needs to be exempt from taxation.” (Emphasis added.)

That is, rather than stating that sales tax may be charged only on that part of the price paid for with cash, the regulation actually states that the only part of the sales price that must be exempted is the actual amount represented by payment in food stamps. The U.S.D.A. has attempted to significantly change the meaning of its own regulation by reversing the portion of the regulation to which the “only” pertains.

Subdivision (b) of Section 278.2 states that food stamps must be accepted for eligible foods at the same prices and on the terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with food stamps. (The manner in which tax may be applied to such purchases is set forth in Section 272.1(b).) Section 278.2(b) further states that no retail food store may single out food stamp users for special treatment in any way. The U.S.D.A. notes that this passage is intended to ensure that food stamp users may purchase food at the most economical price available. Nevertheless, it appears to also cover the situation where a retail food store offers incentives to food stamp users not offered to cash purchasers. That is, not only do the U.S.D.A. regulations specifically state that the only portion of the purchase price of taxable items purchased with food stamps that must be exempted is that portion paid for with food stamps, the U.S.D.A. regulations appear to also prohibit further favorable sales tax treatment by retailers to food stamp users unless that same favorable treatment is offered to cash purchasers.

California sales tax applies to a retailer’s gross receipts from the retail sale of tangible personal property unless otherwise exempt. When a retailer receives cash and manufacturer’s coupons for a taxable sale, the total of these are the retailer’s gross receipts from that sale, and that total is subject to sales tax unless specifically exempted. Federal regulation specify that only the amounts paid with food stamps are exempt. Thus, when a retailer receives cash, manufacturer’s coupons, and food stamps for a taxable sale, the amounts paid in cash as well as the amounts paid with manufacturer’s coupons are subject to sales tax.

As you know, we are very sensitive to the possibility of taxpayers being required to follow one rule under our regulations, promulgated under state law, and a different rule under regulations promulgated under federal law. This is the very reason that our Regulation 1603 was adopted. That provision states that tax does not apply to tangible personal property which is eligible to be purchased and is purchased with Federal food stamps. When payment is made in the form of both food stamps and cash, the amounts paid with food stamps are not taxable and those amounts must be applied first to tangible personal property normally subject to sales tax. This clearly is in strict compliance with the federal regulations. Only the amount paid with food stamps is exempt from sales tax, and the amount paid with food stamps must be applied first to

[X]

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November 1, 1991  
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otherwise taxable purchases. The federal regulation simply does not say what the U.S.D.A. believes that it says.

We also received two letters from [X], and each of those letter writers will receive a copy of this letter. The second of those letters was dated October 3, 1991 from [X] to the U.S.D.A. Based on that letter, it appears appropriate for us to also write a letter to the U.S.D.A. expressing our position. We shall do so.

Sincerely,

David H. Levine  
Senior Tax Counsel

DHL:cl