



STATE BOARD OF EQUALIZATION

December 8, 1954

REDACTED TEXT

Mr. REDACTED TEXT
Controller

This is in reply to your letter of November 4. We are sorry that there was some mix up concerning your correspondence. Your letter of November 21 was referred to a different section of this office than your letter of November 4 and the person handling your letter of November 21 was unable to locate your earlier letter.

You purchase large quantities of cube ice and shaved ice for use in your restaurant. All ice is purchased tax paid. You state that all of the cube ice is sold to customers as a part of alcoholic beverages or with the service of water. You state that much of the shaved ice is used in the service of alcoholic beverages and in the service of seafood cocktails and special deserts.

Ice which is used to cool foods, beverages, or water and which is served to the individual customer along with such food, beverage, or water is regarded as sold by the restaurant rather than used. Accordingly, the restaurant may take a deduction on its return for "tax-paid purchases resold". This deduction is applicable even though the ice is not placed directly in the food or beverage but is packed around it as is often done with seafood cocktails, etc.

Occasionally a customer will request floral decorations at his table and you state that in such a case you charge the customer for the flowers. We assume by this that you mean on your billing to the customer the charge for flowers is separately stated. You purchase the flowers tax paid. It is our opinion that the entire amount paid by the customer, including that paid for flowers, is subject to sales tax. However, since the customer has specifically requested the flowers and since you have separately charged for them, it is our opinion that you are selling the flowers and not using them. Accordingly, having purchased them tax paid, you are entitled to the deduction for tax-paid purchases resold.

Since you have failed to take advantage of the deductions for tax-paid purchases resold in the past, we are construing your letter of November 4 as a claim for refund. You should contact our Santa Monica office, 1312 Fourth St., telephones Texas 0-6330 and Exbrook 3-3771, to arrange a review of your records for the purpose of verifying the amounts of the overpayments. Your refund claim will be valid as to overpayments of tax for periods on and after October 1, 1951.

BH: ja