

550.0525

Memorandum

To: Mr. Jack A. Najarian

Date: March 27, 1972

From: Donald J. Hennessy

Subject: REDACTED TEXT

This is in response to your February 10, 1972 memo regarding contracts for the serving of meals to student boarders at private dormitories and the San Mateo office's February 4, 1972 memo relative thereto.

It is the opinion of our San Mateo office that such dorms should be classified as "boarding houses" within Regulation 1603(a) and that tax should be reported on the fair retail selling price of meals based on a reasonable segregation of the lump-sum charge for room and board.

I agree with San Mateo's opinion and believe that under our prior decisions, most notable the Redlands Rule, the retailer here is the entity which contracts with the board students and receives payment directly from the board students. The caterer (REDACTED TEXT) would be the retailer only as to cash sales. I am assuming that REDACTED TEXT would have a valid resale certificate on file from the entity contracting with the board students. If not, REDACTED TEXT would be liable for sales tax measured by its selling price, and the entity contracting with the board students should be assessed sales tax measured by its markup on meals.

The above is only the Redlands Rule applied to a situation involving a private dorm. While I realize the above poses audit problems, as mentioned in San Mateo's memo, I do not believe we can substantiate classifying REDACTED TEXT as selling for resale when the dorm is operated by a school and as the retailer when a private entity operates the dorm.

While the Redlands Rule is open to criticism, it has twice withstood review through Attorney General conferences, the second review occurring after the Automatic Canteen case, 238 Cal. App. 2d 372. The factual situation here is identical, except that the retailer does not benefit from an exemption. To decide REDACTED TEXT is the retailer when a private dorm is involved would be to admit that when students are the consumers we will go in any direction that affords an exemption or a lesser measure of tax. I find such an admission legally unacceptable and therefore agree with San Mateo's conclusion.

As I mentioned to you, I presently am reviewing the same situation involving dorms operated by REDACTED TEXT Company and REDACTED TEXT Corporation in Goleta, California, and Riverside, California, respectively. I presently propose to write REDACTED TEXT, the caterer, that their understanding that their sales of meals for board students are for resale is correct. As to REDACTED TEXT, which holds a permit for the Goleta location (REDACTED TEXT), there appears to be no problem unless the measure they are reporting is only cost. As to REDACTED

TEXT, alpha files has no record of a permit and REDACTED TEXT may be liable for tax due to the lack of a resale certificate.

I shall withhold sending the REDACTED TEXT letter for a few days in case you wish to discuss this matter with us.

DJH:lb