



STATE BOARD OF EQUALIZATION

September 1, 1983

REDACTED TEXT

Your letter of July 11, 1983 has been referred to me for reply. You request our opinion as to the application of tax to your client's sale of meals and food products under the following proposed transaction.

We understand that your client, REDACTED TEXT, is the sole proprietor of REDACTED TEXT. REDACTED TEXT is a boarding house facility with 284 rooms providing room and board for a flat monthly rate to permanent residents 62 years of age or older. Apparently, REDACTED TEXT's sale of meals and food products to these permanent residents is exempt from tax pursuant to Section 6363.6 of the Revenue and Taxation Code. Your client intends to form a corporation and lease approximately 25 rooms from REDACTED TEXT. Essentially, this corporation plans to operate a hotel for transients on premises by subleasing to the general public the rooms obtained from REDACTED TEXT. The number of rooms leased to the hotel corporation will vary from time to time, depending upon the public's demand for such rooms. Although REDACTED TEXT and the hotel corporation will have separate and independent accounting and bookkeeping systems, the rooms and facilities used by REDACTED TEXT's permanent residents will not be physically separated or partitioned from those rooms and facilities leased to the hotel corporation. A separate lounge area will be made available for the hotel's transient guests. Other common area facilities may be shared with REDACTED TEXT's permanent residents, except for the dining room maintained by REDACTED TEXT. This dining room will not be available to the transient hotel guests, but will continue to be used exclusively for the serving of meals to REDACTED TEXT's permanent guests. The hotel corporation will provide meals to their guests through a room service arrangement, although a continental breakfast may be served their guests in the hotel's lounge area. REDACTED TEXT's staff will provide service to the hotel's transient guests on a subcontract basis to the hotel corporation. The hotel corporation may, however, eventually hire its own employees for this purpose.

You are aware that the hotel's serving of meals to its guests is subject to tax. Your client wishes to confirm that the proposed lease transaction between the hotel corporation and REDACTED TEXT will not jeopardize REDACTED TEXT exemption from sales tax on the meals served to and consumed by its residents age 62 years or older who pay a flat monthly rate for room and board.

Section 6363.6 of the Revenue and Taxation Code provides, in part, that there are exempted from sales and use taxes the gross receipts from the sale, storage, use, or other consumption in this state of meals and food products served to and consumed by residents and patients of any house or institution supplying board and room for a flat monthly rate and serving as a principal residence exclusively for persons 62 years of age or older.

Under the proposed transaction, REDACTED TEXT would lease a number of its rooms to a hotel corporation which would in turn sublease them to the general public. Therefore, it is highly probable that under this scheme persons under the age of 62 years would reside at REDACTED TEXT albeit on a transient or temporary basis. As provided by Section 6363.6, the house or institution claiming a tax exemption for the sale of meals to its residents must serve exclusively as a principal residence for persons 62 years or older. Clearly, the requirement for exclusive residency by persons 62 years of age or older is not met when the hotel corporation subleases rooms for occupancy by persons under the age of 62 years. Consequently, it is our opinion that the exemption from tax available under Section 6363.6 would not apply to REDACTED TEXT's sale of meals to its residents under the proposed transaction between REDACTED TEXT and the hotel corporation.

If you have any further questions, please write this office.

Very truly yours,

Charles J. Graziano
Tax Counsel