

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

550.0770

In the Matter of the Petition)
for Redetermination of State)
and Local Sales and Use Tax Taxes:)
)
F--- S--- CO.)
)
)
)
Petitioner)

DECISION AND RECOMMENDATION

Account No. SR -- XX XXXXXX

The above-entitled matter came on regularly for hearing on April 13, 1977 in Oakland, California. H. L. Cohen, Hearing Officer

Appearing for Petitioner:

Mr. R--- T---, Attorney at Law
Mr. S. K. K---, Assistant Secretary
Mr. A. R---, Maitre d'Hotel

Appearing for the Board

Mr. G. J. Chew, Auditor
Oakland District

Mr. A. Costa, Supervising Auditor
Oakland District

Protest

Petitioner protests the assertion of tax on banquet tips not reported. Tax was asserted pursuant to an audit covering the period from October 1, 1973 through June 30, 1976, and a determination issued December 7, 1976. The amount upon which the protested tax is based is \$54,799.

Contention

Petitioner contends that the banquet tips are voluntary and thus not subject to tax.

Summary

1. Petitioner is a corporation engaged in business as a restaurant, fish market, bar and liquor store. The last prior audit was through December 31, 1972.

2. Petitioner as part of its business serves banquets. Union rules provide that employees serving banquets be paid a minimum tip of 14%. Petitioner states, and the audit confirms, that petitioner does not adhere to this rule. Tips at banquets are handled in one of three ways: (1) individual diners leave tips directly; (2) a tip in an amount not specified by petitioner is added to the bill for the banquet by the customer; or (3) at the customer's request, petitioner quotes a price on a tax and tip included basis, with the tip percentage specified by the customer. The percentage is sometimes less than 14%. The position of the auditor is that if the tip for the banquet went through petitioner's hands it was a mandatory charge subject to tax.

Analysis and Conclusions

Sales and Use Tax Regulation 1603(f) states that amounts designated as service charges which are added to the price of meals are a part of the taxable selling price of the meals even though such service charges are made in lieu of tips. In this case it is clear that petitioner did not collect a service charge either in lieu of tips or otherwise. Rather, it added to the price of the meals an amount specified by the customer and distributed this amount to its employees. The amount was not a charge made by petitioner but was voluntarily offered by the customer. Petitioner did not pay its employees 14% or more as tips on all banquets, thus its contention is valid that the amounts that it did collect were not collected pursuant to the union contract. The tax should therefore be deleted.

Recommendation

Delete tax. Petitions Unit to make adjustment.

H. L. Cohen, Hearing Officer

May 10, 1977
Date