



STATE BOARD OF EQUALIZATION

September 15, 1987

Dear Mr. REDACTED TEXT,

Your letter requesting an opinion concerning the correct application of tax to certain sales of "cold food to go" has been referred to me for a reply.

As I understand the facts, you are the owner of REDACTED TEXT, a gourmet catering service. You write that over 80 percent of REDACTED TEXT's gross receipts are from sales of food products and more than 80 percent of those sales are taxable. You also write that the REDACTED TEXT makes sales of cold food products to go; however, the REDACTED TEXT has no on-site eating facilities such as tables or chairs. It is your understanding that such sales of cold food to go are not subject to tax.

Except where the sales are specifically exempted by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this state (Rev. & Tax. Code §6051). Section 6359(a) of the code exempts the sale of food products for human consumption from tax; however, section 6359(d)(6) provides that tax applies to the sale of food products as follows:

"When the food products sold are furnished in a form suitable for consumption on the seller's premises, and both of the following apply:

- (A) Over 80 percent of the seller's gross receipts are from the sale of food products.
- (B) Over 80 percent of the seller's retail sales of food products are sales subject to tax pursuant to paragraphs 1 [sale of food products sold as a meal], 2 [food products furnished, prepared or served for consumption at facilities provided by the retailer], 3 [food products ordinarily sold for immediate consumption at an establishment which is defined as a 'drive-in'], or 7 [products sold as hot prepared food]."

Further, Sales and Use Tax Regulation 1603(c), which interprets and applies section 6359(d)(6), provides, in pertinent part, the following:

"Tax applies to sales of food products such as ice cream, milk, milkshakes, hot and cold coffee, cold sandwiches, and donuts furnished in a form suitable for consumption on the seller's premises, when sold by restaurants, fast-food establishments, concessionaires, soda fountains, and other similar establishments, even though such food products are sold on a 'take-out' or 'to go' order." (Emphasis added.)

Applying the above criteria, it is our opinion that a catering business that has no on-site eating facilities, such as tables or chairs, is not an establishment that is similar to a restaurant, fast-food establishment, concessionaire or soda fountain. Therefore, "REDACTED TEXT", as described, is

not subject to the provisions of section 6359(d)(6) and Regulation 1603(c) and, accordingly, REDACTED TEXT's sales of "cold food to go" are not subject to tax.

I hope the above information is helpful. I am enclosing for your review and reference a copy of Sales and Use Tax Regulation 1603 (Taxable Sales of Food Products). If you have any further questions concerning this topic, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr

Enc.

cc: M. Lauchi, Return Review

bc: REDACTED TEXT District Administrator

bc: Mr. Glenn Bystrom

On 9/17/87 you and I discussed this letter and we concluded that a caterer's sale of cold food to go was not subject to the provisions of section 6359(d)(6) and Regulation 1603(c) provided the caterer's place of business contained no on-site eating facilities such as tables and chairs.

Mr. Donald J. Hennessy