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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-5589

August 17, 1990

REDACTED TEXT

Re: REDACTED TEXT

Dear Ms. REDACTED TEXT:

Your letter of May 14, 1990 to Ms. REDACTED TEXT of the Return Review staff has been referred to the legal staff for reply. You have requested a clarification of the correct application of tax to your client's catering charges.

As we understand it, REDACTED TEXT does not have employees on a weekly payroll. They employ people to come in "as-needed" for a certain job. Your understanding, based on a recent conversation with a Board representative from the Hayward District office, is that if a person is hired for a particular job and the amount charged for labor is broken out separately that amount is not subject to tax.

Sales and Use Tax Regulation 1603(h) (copy enclosed) provide, in pertinent part, that:

"The term 'caterer' as used in this regulation means a person engaged in the business of serving meals, food and drinks on the premises of his customers but does not include employees hired by the hour or day."

The phrase "does not include employees hired by the hour or day" found in regulation 1603(h) does not refer to employees hired by the caterer. Rather, the reference to employees is to employees hired by the customer. Thus, if a caterer hires employees to perform serving or other duties the entire charge made by the caterer, including labor is subject to tax. This is true whether or not the caterer hires the employees on a full-time or temporary basis.

We trust this answers your questions concerning the correct application of tax to catering charges. If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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Enclosure