



STATE BOARD OF EQUALIZATION

(916) 322-3684

June 9, 1988

Dear REDACTED TEXT,

Your letter of April 25, 1988 has been referred to me for a reply. You request our opinion concerning the correct application of tax to certain transactions by REDACTED TEXT.

Specifically, you write as follows:

“REDACTED TEXT prepares and delivers two meals per day to people with AIDS and AIDS-related complex. We do not charge for meals served to our clients, this is a free service. However, at the time of client intake, we ask that they donate up to \$4.25 per day to help us offset the costs of the food, no one is turned away if they are unable to pay. The requested \$4.25 is substantially less than the cost of each meal and delivery. Are the foregoing amounts collected from clients subject to Sales and Use Tax?

“REDACTED TEXT recently signed an agreement with the REDACTED TEXT to provide meals for the patients at REDACTED TEXT. We provide cooks and raw food to their kitchen and all of the food is prepared and served on the premises of REDACTED TEXT. Are these services taxable under the Sales and Use Tax Code?

“REDACTED TEXT had an agreement with REDACTED TEXT in which they have agreed to pay us \$2.00 per client per day for AIDS/ARC patients in their REDACTED TEXT. These are clients we would continue to serve, whether or not we received any money from REDACTED TEXT, as they have been diagnosed with AIDS/ARC and this is the only requirement for any person who wishes to receive our meals. This agreement simply offsets a small part of the costs for the meals. We have no written contract with them. Is the amount received from REDACTED TEXT taxable under the Sales and Use Tax Code?”

Revenue and Taxation Code section 6051 imposes tax on the gross receipts of retailers from the sale of tangible personal property in this state except where the sale is specifically excluded or exempted from taxation by statute. Section 6012(a) defines “gross receipts” to mean “the total amount of the sale” and Section 6012(b) defines “the total amount of the sale...” to include “any services that are part of the sale” (emphasis added). Further, section 6006 defines “sale” as the transfer of title or possession of tangible personal property for a consideration.

Finally, section 6359(d)(1) provides that the gross receipts from the sale of meals are not exempt from tax.

Applying the above criteria, it is our opinion that the gross receipts from the sale of meals are subject to tax pursuant to sections 6051 and 6359(d)(1). Further, the transfer of meals for a suggested minimum donation are regarded as being sold since we consider such a transaction to be a transfer to tangible personal property for a consideration pursuant to section 6006 (see also BTLG Annot. 495.0370). The donations received from such sales are included in the retailer's gross receipts, and accordingly, the donations are subject to tax. In addition, the \$2.00 per meal received for the transfer of meals to the REDACTED TEXT is also a sale pursuant to section 6006 and, therefore, the gross receipts from such sales are subject to tax.

It is also our opinion that the gross receipts from the sale of meals includes the costs associated with cooks preparing the meals to be sold, since there are services that are part of the sale of the meals pursuant to section 6012(b). Accordingly, the costs for the services of the cooks, as described in the second paragraph of your letter, are included in taxable gross receipts.

I hope the above information is helpful. If you have any further questions concerning this topic, please do not hesitate to contact this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr