

STATE OF CALIFORNIA  
 BOARD OF EQUALIZATION

In the Matter of the Claim for )  
 Refund Under the Sales and Use ) DECISION AND RECOMMENDATION  
 Tax Law of: )  
 )  
 REDACTED TEXT ) No. REDACTED TEXT  
Petitioner )

The preliminary hearing on the above taxpayer's claim for refund was held on August 9, 1983. In REDACTED TEXT, California.

Hearing Officer John B. Adamo  
 Appearing for Petitioner: REDACTED TEXT  
 Appearing for the Board: REDACTED TEXT  
 District Principal Auditor  
 REDACTED TEXT  
 Auditor

Protested Items

The protested tax liability for the period January 1, 1978 through December 31, 1980 is measured by:

| <u>Item</u>                                      | <u>State, Local and County</u> |
|--------------------------------------------------|--------------------------------|
| A. Unreported food sales                         | \$475,491                      |
| B. Self-consumption of supplies purchased ex-tax | \$ 14,310                      |

Petitioner's Contentions

1. Subject food sales are exempt from taxation under Revenue and Taxation Code Section 6363.5.
2. The Board is estopped from assessing tax, penalties, and interest arising out of subject food sales because the auditor who conducted the prior audit of petitioner stated that the food sales in issue were exempt from tax.

Petitioner is a corporation deriving income from courses, lectures, counseling, book and equipment sales, room rentals, and food sales.

As part of its operations, petitioner operates a retreat for its members in the Los Angeles area. Petitioner provides meals and lodging to its members, who pay for these items. The meals are served in a dining hall operated by petitioner which is open only to Church members attending a retreat. The funds derived from the sale of meals are used to offset the cost of operating the dining hall; if excess funds exist, they are used for other expenses related to the maintenance of the retreat.

During the course of the audit period, petitioner's gross receipts from meals sold at the retreat's dining hall totaled \$475,491. The auditor concluded that these sales did not qualify for the exemption provided under Revenue and Taxation Code Section 6363.5 (reproduced below) on the basis that the meals were not served at a social gathering conducted by petitioner, rather were served on a regular basis every day. The auditor further determined that petitioner's consumption of certain supplies purchased ex-tax was subject to use tax. A deficiency determination, which included a ten percent negligence penalty, was later issued. An additional ten percent finality penalty (Section 6565) was subsequently imposed. The deficiency determination was paid by petitioner on February 11, 1982; petitioner file the claim for refund on July 20, 1982.

Petitioner argues that the food sales in issue are exempt under Section 6363.5. Specifically, it asserts that it constitutes a "religious organization" as that term is defined by the above referenced statute, that the dining hall is operated to furnish meals to its members attending the retreats, and that the funds derived from the dining hall are used to support the operation of the dining facility and to finance other activities. Finally, petitioner maintains that even if Section 6363.5 is not applicable, the Board is estopped from assessing any tax, interest or penalties arising out of the failure to pay tax on the meals served because the auditor who conducted the previous audit allegedly stated that petitioner's food sales were tax exempt. To support this assertion, petitioner has submitted to statement provided by two of its members. At the preliminary hearing conducted on this matter, petitioner acknowledged that it did owe use tax on its consumption of certain supplies purchased ex-tax (Audit item B).

#### Analysis and Conclusions

Revenue and Taxation Code Section 6363.5 provides as follows:

"There are exempted from the taxes imposed by this part of gross receipts from the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption furnished or served by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in furnishing or serving the meals and food products is to obtain revenue for the functions and activities of the organization and the revenue obtained from furnishing or serving the meals and food products is actually used in carrying on such functions and activities.

"For purposes of this section, 'religious organization' means any organization the property of which is exempt from taxation pursuant to

subdivision (f) of Section 3 of Article XIII of the State Constitution.”  
(Emphasis added.)

It is undisputed that petitioner constitutes a “religious organization” as that term is defined in the above quoted section.

Section 6363.5 is a statute allowing an exemption from sales and use taxes under certain conditions. Statutes granting exemptions from taxation must be reasonably, but nevertheless strictly, construed against the taxpayer. (Fellowship of Humanity v. County of Alameda, 153 Cal.App2d 673 (1957).) The taxpayer has the burden of showing that he clearly comes within the exemption. (Fredericka Home v. County of San Diego, 35 Cal.2d 789 (1950).)

The Board has previously set forth its position that, based upon the above emphasized language, the Section 6363.5 exemption is limited to meals served at “fund raising” functions. (Business Taxes Law Guide, Anno. 550.1060, April 23, 1970.) It is evident from petitioner’s own arguments that fund raising was not the purpose for operating the dining hall. Petitioner has acknowledged that it operates the dining hall “to furnish meals to its members assembled there as retreatants attending services and receiving religious training.”

At the preliminary hearing conducted on this matter, petitioner’s representatives stated that the dining hall was designed to serve as an “attractive and secure place for the retreatants to eat” and was intended to eliminate the need for members to leave the premises to find their meals. The dining hall operation, they stated, was not intended to realize a profit, and the funds derived from the sale of meals was used principally, if not exclusively, to offset the cost of the dining hall’s operation. Petitioner clearly did not serve these meals in context of a “fund raising function.” We must conclude, therefore, that petitioner has failed to establish that the subject sales are exempt under Section 6363.5, and that the auditor correctly determined that those sales were taxable.

Finally, we note that it is an elementary rule of statutory interpretation that a statute must be construed with reference to the object sought to be accomplished so as to promote its general purpose or policy. (Dept. of Motor Vehicles v. Ind. Acc. Com., 14 Cal.2d 189 (1939); Candlestick properties, Inc. v. San Francisco Bay Conservation, Etc., Com., 11 Cal.App.3d 557 (1970).) The entire statute is to be given effect, without omission of any portion. (Mercer v. Perez, 68 Cal.2d 104 (1969).) Were we to accept petitioner’s argument, we would have to ignore that portion of the first paragraph of Section 6363.5 requiring that the purpose for serving the meals be fore the purpose of fund raising. (See the above-emphasized portion of Section 6363.5.)

Petitioner’s alternative argument is that the Board is estopped from assessing tax, penalties, and interest arising out o the subject food sales because the auditor who conducted the prior audit of petitioner specifically stated that these sales were not taxable. Petitioner has statements from two of its members to support this assertion. The audit papers from the previous audit make no mention of the dining hall operation. For the reasons set forth below, we need not determine if the elements of equitable estoppel exist here.

Assuming that the previous auditor gave incorrect information to petitioner, that would not be a basis for relieving petitioner from liability for tax which is properly due. An erroneous interpretation by a board employee cannot create an exemption not authorized by law. (See Market Street Railway Co. v. State Board of Equalization, 137 Cal.App.2d 87 (1955)/) Moreover, estoppel is an equitable remedy and can be exercised only by a court of general jurisdiction possessing equitable powers. The Board is an administrative agency having no equitable powers. (See Standard Oil Company of California v. State Board of Equalization, 6 Cal.2d 557 (1936).) Thus the Board has no power to relieve a taxpayer of penalty or interest obligations on the basis of estoppel even if all of the elements of equitable estoppel exist.

Petitioner's concession with respect to the auditor's determination regarding audit item B obviates the necessity of discussing that issue. Petitioner has not contested the negligence penalty imposed with respect to this audit item. Revenue and Taxation Code 6484 provides that if "any part of the deficiency for which a deficiency determination is made is due to negligence..., a penalty of 10 percent of the amount of the determination shall be added thereto." (Emphasis added.) Based upon our conclusion that petitioner was negligent as to its reporting of audit item B, we have no alternative but to conclude that the ten percent negligence penalty be imposed upon the total amount of the deficiency determination.

#### Recommendation

Redetermine without adjustment.

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John B. Adamo, Hearing Officer

11/17/83  
Date