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Memorandum

To: REDACTED TEXT

Date: October 7, 1969

From: Tax Counsel (JKM) - Headquarters

Subject: REDACTED TEXT

This is in reply to your memorandum dated September 5, 1969, concerning sales of meals at REDACTED TEXT College.

By agreement dated February 19, 1965, the REDACTED TEXT Students REDACTED TEXT employed REDACTED TEXT to manage the purchase, preparation and service of food, food products and other items at the cafeteria and at other campus locations (paragraph 1). A part of the service rendered by REDACTED TEXT consisted of the providing, furnishing and serving of meals to students and others (paragraph 3). Periodically, REDACTED TEXT was to submit to the REDACTED TEXT Students an operating profit and loss statement, and was to pay to it any amount by which gross receipts for the period covered by the statement exceeded the sum of the cost of operation plus the applicable proration of the service called for in the contract (paragraph 5). REDACTED TEXT was also to keep accounts and records in connection with the food service (paragraph 7), and it was REDACTED TEXT's responsibility to collect any monies due for food services at special affairs (paragraph 9).

In the past, sales tax has been reported and paid on all meals, including student meals. By letter dated August 6, 1969, however, it has been requested by a representative of the REDACTED TEXT College District that we exempt from tax the receipts from sales of meals and food products served (sold) by REDACTED TEXT to students pursuant to Sales and Use Tax Law section 6363 on the ground that the meals are being served (sold) by the District, although the actual serving (selling) is done through REDACTED TEXT as an arm of the District. Since the District is not a party to the agreement (preface and paragraph 9), however, the receipts are not exempt on this ground. But since section 6363 also exempts from tax the receipts from sales of meals and food products served (sold) to students of a school by student organizations, the receipts would be exempt if the meals are served (sold) by the REDACTED TEXT Students. We regard the terms "selling" and "serving" as used in section 6363 as synonymous.

Section 6363, in part, exempts from tax the gross receipts from sales of meals served to students of schools by schools, school districts and student organizations. In university-student situations, we have held that both sales of meals by universities and sales or meals by caterers to universities for resale to students are exempt from tax under the provisions of this section. To qualify for the exemption in the latter situation, however, the caterer must sell the meals to the university and the university must then resell the meals to the students. Thus, the university must independently contract with the caterer for the purchase of meals and with the students for the sale

of meals. Where the caterer sells the meal directly to the students, such sales are not sales by the university and hence, are not exempt from tax under section 6363.

Our position would be the same in student organization-student situations. Upon reviewing the contract, we think it clear that REDACTED TEXT rather than the REDACTED TEXT students is selling the meals, and in so doing, that it is selling them directly to the students and not to the REDACTED TEXT Students for resale. Thus, these sales are not exempt from tax under section 6363.

With regard to Mr. Trigueros's March 18, 1968, letter concerning certain operations of REDACTED TEXT, REDACTED TEXT contracted with the schools in question to serve full course balanced meals to resident students three times a day, seven days a week. In return, the schools agreed to pay REDACTED TEXT a specific sum per resident student. Presumably, the schools had contracted with the students to provide their room and board. On the basis of the contracts and information developed at a meeting with REDACTED TEXT's representative, Mr. Trigueros concluded that the provisions of these contracts respecting student meals were substantially similar to the provisions in the REDACTED TEXT University-REDACTED TEXT contract wherein we regarded REDACTED TEXT as making sales of meals to the University for resale to the students. In that case, in return for its services, REDACTED TEXT received a sum per student per day, and the University had contracts with REDACTED TEXT and with the students. Thus, REDACTED TEXT's sale of student meals were regarded as exempt sales for resale to each school. Such is not the case here.

JKM:smb

**Note subsequent Board Memorandum Opinion in
John Chris Mogannam (8/10/00).**