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Memorandum

To: Mr. REDACTED TEXT
Department of Industrial Relations

Date: March 4, 1964

From: E. H. Stetson, Tax Counsel

Subject: Employee Meals and Minimum Wage Law

Effective September 20, 1963, Section 6363 of the California Sales and Use Tax Law was amended to eliminate the exemption from the sales tax of sales of meals by employers or employee organizations to employees. Sales of such meals are, accordingly, taxable as explained in sales and use tax Ruling 53 (g), and Interpretation of Ruling 53, Meals, As Applied to Employees' Meals, dated December 11, 1963.

A problem has arisen concerning the application of tax when employees subject to minimum wage orders receive meals in lieu of cash payments. The difference between the amounts actually paid to employees subject to minimum wage orders and the amount of the minimum wage is regarded as consideration attributable to the furnishing of meals, and this difference represents, in our opinion, taxable gross receipts from the sale of meals.

Under the provisions of Section 6012 of the Sales and Use Tax Law, the term "gross receipts" means the sale price "valued in money whether received in money or otherwise." The gross receipts from the sale of the meals is the value which is recognized by law for the purpose of compliance with minimum wage orders. This problem has recently been given thorough consideration and has been discussed with the Office of the Attorney General, whose representatives concur in the foregoing statement of the applicability of the tax.

The difference between the amounts actually paid and the amount of the minimum wage will be considered to be sales tax included so that the tax due with respect to the meals may be measured by taking 4/104ths of this amount. Under this procedure, no amount as tax reimbursement need be charged to the employees because it is considered to be included in the value of the services rendered entitling the employees to compensation in the form of meals.

It is respectfully suggested that this information be disseminated by you to your various offices throughout the state in the interest of uniformity and correct application of the sales tax. We make this suggestion because we have received information from our Fresno office indicating that REDACTED TEXT of your Fresno office, and perhaps other offices of the Department, have been under the impression that sales tax does not apply in the situation to which this memo is directed.

Our position as set forth herein has been explained to our staff and will be furnished to the various tax service publications. We have also indicated our position to the general manager and to the counsel for the California State Restaurant Association.

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