



STATE BOARD OF EQUALIZATION

(916) 322-3684

April 28, 1987

Dear Mr. REDACTED TEXT,

Your March 13, 1987 letter requesting a written opinion concerning the correct application of tax to certain sales of meals has been referred to me for reply.

Specifically, you write as follows: REDACTED TEXT has constructed a REDACTED TEXT Center in REDACTED TEXT, California, and contracted REDACTED TEXT to provide operations services. REDACTED TEXT will conduct training at the facility that will require housing and food services. REDACTED TEXT will hire and pay employees, purchase and prepare food, and bill REDACTED TEXT the cost of such services as well as a management fee. Students will not pay for their meals; consequently, are such meals subjects to sales tax in the State of California?"

Except where the sales are specifically exempted by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this state (Rev. & Tax. Code § 6051). Revenue and Taxation Code section 6359 exempts from tax the sale of food products sold for human consumption, but section 6359(d)(1) provides that this exemption does not apply to the sale of food products served as meals on or off the premises of the retailer. Additionally, section 6363, in pertinent part, exempts from tax the sale of meals and food products furnished or served to the students of a school by a public or private school, school district, student organization, or parent-teacher association.

Finally, Sales and Use Tax Regulation 1603(h), which interprets and defines the code, provides that tax applies to the entire charges made by caterers for serving meals and the term "caterers" is defined as a person engaged in the business of serving meals on the premises of his or her customers.

Applying the above criteria, it is our opinion that REDACTED TEXT Center is not a school within the meaning of section 6363 since REDACTED TEXT is not an academic institution that is conducting educational instruction. REDACTED TEXT is primarily an employer that is providing employee training to its employees at its facilities (the REDACTED TEXT Center). Additionally, section 6363 requires the meals to be furnished or served by the school. Under the described circumstances, REDACTED TEXT, and not REDACTED TEXT, furnishes or serves the meals and then bills REDACTED TEXT for its services. Accordingly, the exemption provided for in section 6363 does not apply to the described transaction.

It is our opinion, however, that REDACTED TEXT is making sales of meals, the gross receipts of which are subject to tax. REDACTED TEXT has a contract with REDACTED TEXT to

furnish and serve meals to REDACTED TEXT employees/trainees at the REDACTED TEXT Center, and since the employees/trainees do not pay for the meals, it is our opinion that REDACTED TEXT is making sales of the meals to REDACTED TEXT. Further, since REDACTED TEXT is engaged in the business of serving meals on the premises of REDACTED TEXT, its customer, it is our opinion that REDACTED TEXT is a “caterer” pursuant to Regulation 1603(h). Accordingly, the gross receipts from REDACTED TEXT’s sales of meals to REDACTED TEXT are taxable pursuant to section 6051 and Regulation 1603(h).

I hope the above information is helpful. Enclosed for your review and reference is a copy of Sales and Use Tax Regulation 1603 (Taxable Sales of Food Products). If you have any further questions concerning this topic, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr

Enc.