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**STATE BOARD OF EQUALIZATION**

November 2, 1964

After acknowledging your letter of October 16, 1964, to former State \_\_\_\_\_, \_\_\_\_\_ forwarded your letter to Harry L. Say, Assistant Executive Secretary, Business Taxes. Mr. Say retired from state service, effective the first of this month, and your letter was referred to the undersigned for attention.

The legislation explained in the memorandum which you received from the state Department of Education is an amendment to section 6363 of the Revenue and Taxation Code by Assembly Bill No. 2519, effective September 20, 1963. Prior to the amendment, this section exempted from the sales tax sales of "meals and food products for human consumption served to the students or teachers of a school by public or private schools, school districts, student organizations, parent-teacher associations,...and meals and food products for human consumption served by employers or employee organizations to the employees engaged in work upon a particular project or undertaking." The amendment made by Assembly Bill No. 2519 simply deleted the words "and meals and food products for human consumption served by employers or employee organizations to the employees engaged in work upon a particular project or undertaking."

Thus, the exemption now applies only to the sale of meals and food products "served to the students or teachers of a school by public or private schools, school districts, student organizations, parent-teacher associations...", Accordingly, unless the meals are served to students or teachers, there is no longer a statutory exemption.

In 1964, a bill was introduced (Assembly Bill No. 50) which if passed would have included school employees in the exempt category along with students and teachers. This bill, however, was unsuccessful. Inasmuch as the application of the tax to meals sold school employees other than teachers and students is the result of legislative action, legislation is required to bring about a change.

Sales to employees not exempt as sales to students and teachers are, however, taxable only if a specific charge is made to the employees by payroll deduction or otherwise. In applying this ruling, book entries made merely for the purpose of placing a monetary value on meals furnished employees as a part of compensation (to meet the requirements of various laws, union contracts, etc.) will not be considered specific charges.

We also point out that it is unnecessary under the law to add an amount to meal charges and label such amount specifically as sales tax. Under legislation passed in 1961, a seller may, if he so desires, include in his sales prices an amount of reimbursement for tax computed to the nearest mill at the applicable tax rate. The school may, nevertheless, consider the price charged to be tax included and compute its tax liability to the state upon the sale price less the tax included.

It is our desire to cooperate in any way possible under the law to assist schools in simplifying their tax computation. To that end, any of our district or branch offices throughout the state will be happy to confer with the appropriate school officials to determine under the particular circumstances some method of arriving at the proper amount of tax under the law which would be the most satisfactory to all concerned. Such a procedure might be the developing of a percentage of total sales considered subject to tax avoiding the accounting details of a specific segregation of sales, as long as conditions remain substantially the same as when the percentage was developed.

Very truly yours,

E. H. Stetson  
Tax Counsel

EHS:fb

cc: Hon. Richard Nevins  
San Bernardino – District Administrator