



STATE BOARD OF EQUALIZATION

January 28, 1955

Dear REDACTED TEXT,

Our Santa Rose Office has informed us that you have inquired concerning the application of the sales tax with respect to the sale of food in containers in which it was cooked, the containers being returned to your for reuse, but the food being actually consumed away from your premises.

We understand from the report of our District Office that you proposed to submit your inquiry in writing directly to this office. We have not, however, received any communication from you and so assume that you may have understood that we would write directly to you upon the basis of the information received from our District Office.

It is our opinion that the sale of cooked food for consumption away from your premises is exempt from sales tax as a sale of food products for human consumption. We do not believe that the delivery of the food in the containers or pots in which it is cooked requires the application of the tax, provided these containers or pots are used only to delivery the food to your customers who consume the food away from your premises and without any dishes or other tableware provided by you.

In order to claim exemption of the sales in question it is, of course, necessary that your records be maintained in such a manner as to permit verification of the amount of your sales in pots or containers for consumption away from your premises. (See in this connection of Sales and Use Tax Ruling 53, copy enclosed, subdivision B.)

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph

Memorandum

To: Santa Rosa – Auditing (JPG)

Date: January 23, 1955

From: Headquarters – Sales Tax Counsel

Subject: REDACTED TEXT

In further explanation of our opinion, we understand that the retailer does not furnish any “trays, glasses, dishes, or other tableware” for consumption of the food which he sells.

We do not believe that the pots in which the food is cooked and delivered to the consumer constitute tableware of a kind contemplated by Section 6359. It has always been the practice to regard as exempt from the sales tax the sale of prepared food in containers which are taken home by the customer or delivered to the customer’s home by the retailer. We do not believe it is material whether or not the containers are returned to the retailer.

E. H. Stetson

EHS:ph