



STATE BOARD OF EQUALIZATION

May 17, 1954

Attention:

Gentlemen:

This is in reply to your letter of May 10 in which you describe the type of business which a client of yours proposes to enter as follows:

“Broiled chicken, a roll and honey, and green salad and dressing will be delivered to customer of our client. This food will be ready for consumption upon delivery. The chicken, roll and honey will be wrapped in foil and placed in a box and the salad and dressing placed in individual containers. The foil, box and the containers will not be retained by the purchasers of the food. No eating utensils will be supplied with the food. A customer, in order to obtain the food, will telephone a central office, which in turn will advise a truck operator by radio telephone as to the name and address of the customer. The truck will be equipped with an electric broiler and refrigerator and, upon receipt of an order from the central office, a check stationed in the truck will prepare the food for delivery and consumption on the customer’s premises. Payment of the purchase price therefore will complete the transaction between the customer and the proprietor.”

In our opinion this is a nontaxable sale of food products for human consumption. All of the facilities furnished by the seller in which the food is delivered are nonreturnable and do not constitute tableware or other utensils of the kind mentioned in Section 6359 of the Sales and Use Tax Law. While it might be argued that what is sold may constitute a “meal” so as to be taxable, regardless of the absence of facilities furnished by the retailer, it is our opinion that food delivered in the manner described is not properly embraced within the term “meals served” as used in Section 6359.

The sale of the foil, boxes, and containers to your clients are exempt under Section 6364 as nonreturnable containers sold along with the contents, and the sale of these containers with the contents is likewise exempt under the same section.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph

cc: San Francisco – Tax Administrator