

550.1620

Memorandum

To: Los Angeles – Dist. Prin. Aud. (JTQ)

Date: November 29, 1965

From: Tax Counsel (EHS)

Subject: This refers to your memo of November 19 and its enclosures.

We do not believe that the change in Section 6359 requires that the tax be held to apply to the sale of food in bulk insulated containers, which are consumed by employees of an oil refinery. While it may be true that the oil refinery will furnish some facilities for consumption, this fact alone does not, in our opinion, bring the amendment to the statute into operation. If we were to take this position whenever a retailer of food products, e.g., a grocery store, meat market, bakery, delicatessen, dairy, or other retailer, should sell food which is ultimately to be consumed with facilities provided by the purchaser, the tax would apply. We do not think the intent was to go this far, nor are we required to go that far by the language used.

We think that the facilities must be reasonably intended for use in consuming the food purchased as evidenced by proximity of the facilities to the place at which the food is sold, and by the terms of the agreement which in some manner shall obligate the food seller to sell food to someone other than the party actually furnishing the facilities. It is hard to draw the line with definiteness, but the situation which you submit seems more like the straight bulk sale situation which is not considered changed by the amendment to the law.

EHS:fb [lb]