

**STATE BOARD OF EQUALIZATION**

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*Controller, Sacramento*

November 15, 1995

BURTON W. OLIVER  
*Executive Director*

Mr. B--- W---  
W---, K--- & B---  
XXXX --- Road  
---, California XXXXX

RE: SR -- XX-XXXXXX  
Filled Croissants

Dear Mr. W---:

I am writing this to follow-up our recent telephone conversations regarding whether or not sales of filled croissants qualify for the exclusion from tax for single-item sales of "baked-goods" under Regulation 1603(e)(1). As you know, under that regulation, while sales of hot prepared foods are subject to sales tax, when a hot baked good is sold for a separate price, its sale is not subject to tax. You asked if a croissant filled with fruit filling or with meat and cheese qualifies as a "baked good" under the regulation.

In determining if a filled item is a food product, we look to the nature of the filling. For example, liqueur-filled candy is a non-food product because it is filled with a measurable amount of an alcoholic beverage which is excluded from the definition of "food products." (Reg. 1602(a)(2).)

Therefore, we treat the sales of croissants as the sale of any other filled baked good. If the croissant has a fruit or cream filling, it would be a "bakery good" within the meaning of Regulation 1603(e)(1), just as is a jelly- or cream-filled doughnut. Sales of such items for a single price would be considered sales of bakery products and either taxable or exempt according to the conditions of sale. (Reg. 1603(e)(1).)

Soon after the statute providing for the exclusion of hot bakery items sold for a single price from the definition of hot prepared food products was enacted, we considered whether

Cornish pasties would qualify. We determined at that time that such items were more properly "meals" sold wrapped in pastry and not the kind of item the law contemplated. (See Rev. & Tax. Code § 6359(e).) In the same vein, we conclude that a croissant filled with meat and cheese would be more like a meat and cheese sandwich than a bakery good, and therefore not within the meaning of the statute. As a result, the sale for a single price of a hot meat- and cheese-filled croissant would be the sale of a hot prepared food product under Regulation 1602(e)(1) and so subject to tax.

As you requested, I have attached copies of two letters dated April 5 and May 9, 1972 (taxpayer identifying information excised) explaining the Board's position on pasties. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid  
Senior Staff Counsel

JLW:sr

Encs.

cc: --- District Administrator - --  
(The retailer is undergoing audit. This question was submitted with the auditor's concurrence.)  
Ms. Kelly Ching