



---

**STATE BOARD OF EQUALIZATION**

September 4, 1951

REDACTED TEXT

This is in reply to your letter of August 10, 1951, addressed to Mr. REDACTED TEXT requesting an opinion as to the application of tax to the above taxpayer's boardinghouse operations. It appears that the permit was issued to REDACTED TEXT, and that during his life more than five boarders were served, on the average. He died in December 1950, and thereafter less than five boarders were served by his widow, who continued operations until June or July 1951, when she sold the business. You state that for a twelve-month period ending in July 1951, there were on the average more than five paying guests, and you ask as to the period of time for which an average should be taken.

Since there is no prescribed time in Ruling 53 for computing averages, it is our opinion there is no arbitrary period of time for which an average should be computed, and that the determination should be based on the facts of the particular case, so as to arrive at a reasonable period in each case. It would be confusing and undesirable to compute the average on a flat monthly basis in all cases, since a boardinghouse with only a slight fluctuation in boarders might alternate monthly from status as taxpayer to an exempt status. On the other hand an arbitrary adoption of an annual basis for computing the average without allowance for other facts, might work to the disadvantage either of the taxpayer or of the State in cases where there has been a sudden major change in the volume of guests served at the boardinghouse. We believe that if a boardinghouse which normally averages three guests enlarges its facilities to serve six, it become subject to the tax during the first reporting period in which it averages five or more guests. On the other hand, a boardinghouse which customarily averages six paying guests should be considered exempt during the first reporting period during which, as a permanent policy change due to changes in facilities or personnel, it averages less than five paying guests. A definitely longer period of time should be required to establish an average where the decrease in guests is due merely to a decrease in business, and the boardinghouse continues to offer its services to five or more and thus potentially will maintain its average.

With relation to the particular account here involved, it seems likely that a major change in policy of the boardinghouse occurred upon the death of Mr. REDACTED TEXT and that on this theory new averages may properly be computed beginning with December 1950, thus resulting in a refund of the tax for the period December 1950 to July 1951.

In any event it is clear that there was a change of entity when Mr. REDACTED TEXT died. Mrs. REDACTED TEXT was a new entity who with respect to her operation of the business did not have an average of five or more boarders. We are of the opinion that the guests served by the predecessor cannot be counted in computing averages in determining this taxpayer's liability, and accordingly that she was erroneously paid tax which was not due.

AOC:ja