



STATE BOARD OF EQUALIZATION

August 28, 1953

Mr. S--- L. C---
Attorney at Law
XXX West ---
---, California

Dear Mr. C---:

Mr. Harry L. Say, Sales Tax Administrator, has referred to me for reply your letter of August 19 concerning the application of the sales tax to amounts charged by a person in the restaurant business as tips for his waitresses.

If the restaurant operator merely collects the tips on behalf of the employees and does not apply them against the employee's minimum wages, and further if the customer is not obligated to pay the tip if he does not desire to do so, it is our opinion that the amount collected as tips is not a part of the retailer's gross receipts from the sale of the meal.

Concerning tips that are applied to minimum wages of the employees, see *Anders v. State Board of Equalization*, 82 Cal. App. 2d 88.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph

cc: San Bernardino – Tax Administrator