



550.0809

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 322-2976

MEMBER
First District

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

September 14, 1993

REDACTED TEXT

BURTON W. OLIVER
Executive Director

Dear Mr. REDACTED TEXT:

Re: Application of Sales Tax to Cake Cutting

This letter is in response to your letter of August 16, 1993 in which you request advice regarding the application of tax to cake cutting services performed at wedding receptions and banquets by restaurant personnel. I am assuming that the cake is provided by an outside bakery and that the personnel at the country club merely cut and serve the cake.

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1).

In your case, the application of tax depends upon whether there has been a "sale" of tangible personal property. Under Revenue and Taxation Code section 6006, a "sale" includes "{t}he furnishing, preparing, or **serv**ing for a consideration of food, meals, or drinks". (Rev. & Tax Code § 6006(d).) (emphasis added.)

As you mentioned in your letter, a similar issue was decided in Annotation 295.0120. This annotation states that the opening and serving of customer-furnished champagne is a sale and as such charges for this are includible in taxable gross receipts.

Since you are serving the cake, there is a "sale" for sales tax purposes. The amount charged for the cutting and serving of cake is subject to sales tax.

If you have any further questions, please do not hesitate to write again.

Sincerely,

Sukhwinder K. Dhanda
Staff Counsel

SKD:plh