

550.1135

Memorandum

To: Audit Review and Refunds
S. T. Sarem

Date: July 15, 1986

From: Headquarters – Legal
Robert J. Stipe

Subject: California Conservation Corps

This is in response to your memorandum of May 16, 1986 requesting an opinion concerning the correct application of tax to meals served by the California Conservation Corps (CCC) to its employees. Attached to your memorandum is a copy of the enabling legislation and other brochures that describe the CCC.

As I understand it, the CCC is a work ethic program which employs young people (corpsmembers) and functions to conserve and enhance the state's natural resources. The corpsmembers build parks and trails, clear streams, plant trees, and fight forest fires and floods. A corpsmember earns \$580 per month and the Corps takes back \$145 monthly for room and meals.

According to the CCC's enabling legislation, it was the Legislature's intent, in part, that the CCC was to benefit the corpsmembers by providing meaningful educational and work opportunities. After eight hours of work, corpsmembers are required to attend evening workshops and classes. Major subject areas include literacy, career development, and conservation awareness. Those corpsmembers who do not have high school diplomas take courses to earn a high school equivalency diploma. Financing of tuition for corpsmembers at local community colleges is available and corpsmembers may earn up to twenty units of credit for their work and classes.

As I understand it, the literacy, high school equivalency, and community college courses are taught by other educational institutions, but the CCC, and not the corpsmember, pays for the costs associated with the classes. On the other hand, the conservation awareness and part of the career development courses are taught by experienced CCC staff at facilities provided by the CCC.

The course in conservation awareness is held in six one hour classes and includes subjects in theory of conservation, natural resources, ecology, and energy conservation. The course in career development is also held in six one hour classes and includes subjects in skill identification, resume writing, job seeking and interviewing procedures. Only one-half of the classes in career development are taught by CCC staff.

You write that the CCC is contending that it does not make a specific charge for corpsmember meals and therefore should not be paying state sales tax on meals provided to the corpsmembers. In the alternative, the CCC contends that since it provides the corpsmember with specialized remedial education classes in a very structured evening program, it is similar to a school and therefore the sale of the meals should be exempt pursuant to section 6363 of the Revenue and Taxation Code.

Except where the sales are specifically exempted by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this state (Rev. & Tax. Code § 6051). Section 6359(a) of the Revenue and Taxation Code exempts the sale of food products for human consumption, provide that the food products exemption does not apply “when food products are served as meals...” or as “hot prepared food products...”

Sales and Use Tax Regulation 1603(k)(1), which interprets and applies the Code, provides that tax applies to an employer’s sale of meals to its employees if the employer sells meals to an average of five or more employees during the calendar quarter. Regulation 1603(k)(2) provides that the tax in Regulation 1603(k)(1) applies only if a specific charge is made for the meals and Regulation 1603(k)(2)(B) provides that a specific charge is made if the value of the meals is deducted from the employee’s wages.

We are of the opinion that a specific charge pursuant to Regulation 1603(k)(2)(B) is made for the meals served to the corpsmembers since the CCC deducts the costs of the meals from the corpsmember’s wages. Therefore, the CCC’s sale of meals to its employees is taxable pursuant to Regulation 1603(k).

Alternatively, section 6363 of the Code in pertinent part provides as follows:

“Meals. There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to the students of a school by public or private schools, school districts, student organizations, parent-teacher associations,...”

Also, Regulation 1603(j)(2)(A) in part, provides that sales of meals to students of a public or private school are exempt from tax.

We have held in the past that to qualify as a “school” under the above statute and regulation, the facility must provide regularly scheduled classes with required attendance taught by qualified instructors (Business Taxes Law Guide Annotation 360.0160).

As described, only nine hours of the courses available to the corpsmember (six hours of conservation awareness and three hours of career development) are taught at the CCC by instructors from the CCC. The remainder of the courses (literacy, high school equivalency and community college classes) are taught by instructors other than CCC staff and at facilities other than those of the CCC. In our view the nine hours of instruction is an inadequate amount of regularly scheduled classes provided by the CCC to qualify the CCC as a “school” pursuant to section 6363. We view the CCC as primarily an employer that provides the funding and opportunities for its employees to further their

education. Therefore, the CCC is not a school pursuant to section 6363 and the CCC's sale of meals to its employees is taxable pursuant to sections 6051 and 6359(a)(1) and (2).

RJS:fr

bc: Mr. Don Hennessy
Mr. Les Sorensen