550.1420

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

September 30, 1963

Dear Mr. REDACTED TEXT,

This is with reference to your letter of September 3, 1963, to Mr. W. T. Denny. Enclosed is a copy of sales and use tax ruling 53, Meals, as amended by the board on September 18. Paragraph (g) covers the subject of employees meals. This paragraph was amended to make it conform to section 6363 of the Sales and Use Tax Law as amended by Assembly Bill No. 2519.

It is our view that for the tax to apply with respect to meals furnished by employers to employees there must be a specific charge by payroll deduction or otherwise, or there must be a difference in remuneration paid to the employees based upon the furnishing or nonfurnishing of meals. In the absence of a specific charge, or such difference in remuneration, the fact that an employer reports the fair market value of meals furnished to employees pursuant to regulations issued by state and federal departments, or is required by a union contract to furnish meals or pay a stated amount in lieu thereof, will not result in the tax applying with respect to the meals.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb
Enclosure

cc: Mr. W. T. Denny
Santa Rose – District Administrator

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

November 7, 1963[D]

This is with reference to your letter o October 15, 1963, regarding ruling 53 and meals served by employers to employees. A copy of the ruling is enclosed.

Subsection (g) of the ruling provides, in effect, that if the employer makes a specific charge for the meal, the tax will apply measured by the charge. Also, if the employer makes no specific charge but deducts from the employees' wages an amount for the meal, tax will apply on the amount deducted.

If no specific charge is made and no payroll deduction is apparent, there still may be tax due. For example, if employees A and B do the same kind of work and are paid the same wages, the A receives less pay than B because he or she receives meals served by the employer, the difference between the wages received by A and B will be regarded as the sale price of the meals and will be subject to tax.

Where minimum wage includes the employee's meals, there would be no tax on the difference between the minimum wage and the gross wage actually paid. The same applies in a union contract wherein the employer is required to furnish meals, and he shows an amount that represents the value of meals in arriving at gross wages paid.

The examples you give in your letter all appear to show a specific charge in the form of a payroll deduction, and tax would apply on the deduction. However, the example showing the woman's gross to be $10.00, and net to be $6.99 appears to be a minimum wage question. If so, there would be no tax on the amount shown as meals since the amounts representing meals are shown to satisfy minimum wage requirements. In the first example, if the employee (man) received gross wages in cash amounting to $21.05 if he did not take meals, but only $20.00 cash if he did take meals, the tax would apply since the payroll deduction is for the meals. The same applies to example three (woman who has a gross wage of $11.05).

In examples one and three, if the employees received the amount in cash shown, whether they ate meals or not, there would be no tax on the amount shown to represent meals.

Very truly yours,

R. H. Anderson
Assistant Counsel

RHA:cr
Enclosure

cc: San Diego – District Administrator

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

October 15, 1963

Gentlemen:

Enclosed is a copy of ruling 53, Meals, revised to conform to section 6363 of the Sales and Use Tax Law as amended by the 1963 regular session of the State Legislature. Part (g) covers the subject of employee's meals.

In applying ruling 53(g), book entries made by restaurants, hotels, boarding houses, and other retailers of meals merely for the purpose of placing a monetary value of meals furnished employees as part of compensation (to meet the requirement of various laws, union contracts, etc.) will not be considered specific charges.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb
Enclosure

cc: San Jose – District Administrator

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

December 4, 1963

Gentlemen:

This is in reply to your letter of November 13, 1963. In determining whether a specific charge for meals is made so that sales tax would apply thereto, our position is as follows:

The tax applies only if a specific charge is made for the meals pursuant to agreement between the employer and the employees. A specific charge is made if payment is by cash, or if an amount to cover the prices of the meals is withheld from payments of salaries or wages. A specific charge is also considered made if an employee receiving meals is paid less than an employee performing comparable services who secures his meals elsewhere. The difference in pay is considered to be a specific charge.

Reporting the fair market value of employees' meals pursuant to state or federal laws or regulations or union contracts, does not, however, constitute a specific charge or difference in pay. If no charge is made, the employer is the consumer of the food products purchased, and the sale of the food products to him is not subject to tax. If he furnished any nonfood items with the meals, e.g., candy, gum, cigarettes, soft drinks, the tax applies to the sale of such products to him.

Accordingly, "free meals" given to store personnel are not considered as sold even though because of federal law the stores enter on the payroll sheets a credit entry of cash value for each meal given.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb

cc: San Mateo – Subdistrict Administrator