

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

WILLIAM M. BENNETT
First District, Kentfield

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

BURTON W. OLIVER
Executive Director

January 14, 1993

Ms. M--- L--- C---
President, W--- Sales
XXX --- Street
--- ---, California XXXXX

Re: [No Seller's Permit]
Sales of Meals to Institutions

Dear Ms. C---:

I am answering your letter dated December 15, 1992, to me. You were following up on my letter to you of September 9, 1992, and our recent telephone conversation regarding sales of meals to institutions. You ask me to reconsider the opinion of the Legal Division, as expressed in that letter, that State prisons are not considered "institutions" for the purpose of the exemption from sales and use tax for sales of meals to "institutions" pursuant to Regulation 1603(m). In your letter as well as over the phone, you asked "if a prison is not an institution, what is it?"

As we discussed over the phone and as I stated in my letter, while a prison may be an "institution" in the dictionary sense, it is not the kind of "institution" covered by the regulation. The term "institution" as used therein is defined in Revenue and Taxation Code Section 6363.6, the statute which the regulation interprets and implements. The Board, as an administrative agency, is forbidden to expand that definition.

You indicate that you found an old copy of the regulation from 1974 indicating it has been re-written to exclude prison inmates. I have researched the regulation, even going back to former Tax Ruling No. 7, the predecessor of Regulation 1503. Although a reference to sales to "inmates" was contained in sub-division (b)(2) at that time (it was changed to "residents" in 1979), the definition of "institutions" contained therein includes the same sorts of facilities as today and does not include prisons.

You correctly note that sales of "snack foods" when sold separately for a separate price are exempt from tax effective December 1, 1992. However, no statute exempts your sales of meals to prison inmates. If the snack foods are included in the meals, they are also subject to tax as components of taxable meals.

We are required to follow the statutory definition and may not extend the exemption to institutions other than those set out therein. Only the Legislature can do that.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es