



STATE BOARD OF EQUALIZATION

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August 21, 1995

BURTON W. OLIVER
Executive Director

Mr. S--- G---, Administrator
V--- C--- F---
P. O. Box XXXXX
---, CA XXXXX

Re: Religious Organizations Food Product Sales
SR -- XX-XXXXXX

Dear Mr. G---:

This is in response to your letter dated May 12, 1995, in which you inquire about the application of sales tax to food products sold by your ministry.

As we understand the facts your ministry sells coffee, sodas, "Snapple", muffins, bagels and other snacks in conjunction with your services which are primarily held on Sundays and Tuesdays. Tables and chairs are provided in the foyer of the facility to provide ministry attendees an opportunity to sit and eat. This seating arrangement is designed to allow ministry attendees to build friendships and experience fellowship within the church. The proceeds from these sales are used to cover the cost of the food and beverages with any excess placed in the ministry's general fund. You have inquired about the ministry's sales tax obligations relative to these sales.

Retail sales of tangible personal property in California are subject to sales tax, which is measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Revenue and Taxation Code section 6359 provides the relevant exemption for certain sales of food products. This exemption is explained in Regulations 1602 and 1603, copies of which are enclosed.

Section 6359(a) states the general rule that sales of food products for human consumption are exempt from tax. However, subdivision (d) of section 6359 contains a list of circumstances in which the sales of food products are not exempt from tax. The circumstances relevant to your inquiry are:

"(1) When the food products are served as meals on or off the premises of the retailer."

"(2) When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others." and

"(7) When the food products are sold as hot prepared food products."

With respect to section 6359(d)(1), the Board has consistently held that two or more food types sold together constitute a meal. Business Taxes Law Guide Annotation 550.0160 (9/29/76) states that a soft drink and sandwich when sold together constitute a meal. If the ministry serves any food products as meals, the sales of those food products come within this subdivision.

Sales of food products furnished, prepared, or served for consumption at tables, chairs provided by the ministry come within section 6359(d)(2).

Subdivision (e) of Section 6359 defines "hot prepared food products" as those products which have been "prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold." Hot beverages such as coffee are hot prepared foods but their sale for a separate price is exempt **unless** sold for consumption at the facilities provided by the seller.

All sales of carbonated and alcoholic drinks are subject to tax. (Reg. 1602 (a)(2).) Sales of beverages such as fruit juices and noncarbonated or noneffervescent bottled waters are exempt from sales tax (Reg. 1602(a)(2)) **unless** sold for consumption at the facilities provided by the retailer or sold with a combination of hot and cold foods. (Reg. 1603(e), (f).)

Even if your ministry's sales of food products or meals come within one or more of the circumstances described in section 6359(d), its sales might be exempt from tax under section 6363.5.

From the information you have provided it appears that the food products you sell are in conjunction with gatherings conducted by the ministry and that the purpose of these sales is to obtain revenue which is used for carrying on the functions of the ministry. As long as the ministry qualifies as an organization, the property of which is exempt pursuant to Subdivision (f) of Section 3 of Article XIII of California's State Constitution, the ministry's sales of food products for human consumption on its premises will not be taxable.

However, as previously discussed, carbonated beverages and carbonated or effervescent bottled waters do not qualify as food products. Thus sales of these items are subject to tax. The Board has previously determined that "Snapple" products which are flavored ice teas or non carbonated flavored waters are not taxable. So long as the Snapple products you sell are noncarbonated and noneffervescent, your sales of these products for consumption on the premises at the ministry gatherings, as described above, will not be taxable.

If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Staff Counsel

PHJ:cl

Enclosures (Regulations 1602 and 1603)

cc: Lynn Whitaker, Audit Evaluation and Planning
Arcadia District Administrator