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July 10, 1992

Mr. T--- H---  
--- & ---  
XX --- Street  
--- ---, CA XXXXX-XXXX

Re: HY HQ XX-XXXXXX  
M--- C--- O--- of E---  
Sales Tax on Meals

Dear Mr. H---:

I am answering your letter to me of May 21, 1992. Your client, the M--- C--- O--- of E---, has requested on the application of sales tax on meals which you indicate that it provides at its W--- C--- R--- facility.

**I. FACTUAL BACKGROUND**

You describe the factual background as follows:

- "1. The M--- C--- O--- of E--- is a C--- level school entity which operates its own school sites in M--- C---.
- "2. W--- C--- R--- is a school of the O--- of E--- which provides science classes to students from the entire bay area. These students are sent by their home schools which pay for the classes received.
- "3. Home school teachers attend science classes at W--- C--- R--- with the students. The classes are coordinated to tie to the home school curriculums.
- "4. Class sessions last one week. Students and home school teachers live at W--- C--- R--- during the sessions. Meals are provided.
- "5. The faculty at W--- C--- R--- consists of credentialed and classified personnel. The principal is credentialed by the State of California.

"6. W--- C--- R--- qualifies for and receives commodities from the U.S. Government School Lunch Program.

"7. W--- C--- R--- is also an accredited site for the ElderHostel Program.

"8. ElderHostel coordinates education programs designed for senior citizens. Accredited organizations prepare and present three courses over a six day period. These courses are required to be college-level and the faculty is required to have college-level experience.

"9. ElderHostel requires that course organizers provide lodging and meals during the six-day course period.

"10. The M--- C--- O--- of E--- organizes and presents the courses offered through Elderhostel. ElderHostel only acts as a coordinator, registrar and publicist for the programs.

"11. The W--- C--- Facility is also rented by the M--- C--- O--- of E--- to outside parties. The facilities include lodging and meals.

"12. All meals provided at the facility are prepared by employees of the O--- of E---. No outside caterers are used."

When you say that the M--- C--- O--- of E--- is a "county level school entity," we assume that it is an agency of M--- C--- rather than a school district formed under the Government Code. You do not indicate if the facility furnishes meals to the faculty.

You conclude that W--- C--- R---'s sales of meals to its students and the ElderHostel students are exempt from tax but that its sales of meals to the outside organizations to whom it rents its facility are not.

## II. OPINION

As you note, Revenue and Taxation Code Section 6363, interpreted and implemented by Regulation 1603(j)(2)(A), exempts from tax the sale of meals and food products for human consumption furnished or served to the students of a school by public or private schools and school districts, among other organizations not applicable here. The M--- C--- O--- of E---, as a county agency, is not an "independent governmental agency distinct from the county, city, or town in which it is wholly or in part territorially situated," and so is not a school district. (Gould v. Richmond Sch. Dist. (1943) 58 Cal.App.2d 497, 502 [136 P.2d 864].)

"The word 'school' is variously defined as an institution or place for instruction or education; a place for learned intercourse and instruction; a place for acquiring knowledge and mental training; a place for the instruction of children; a place where instruction is imparted to the young; an educational establishment." (Bd. of Supervisors v. Cothran (1948) 84 Cal.App.2d 679 [191 P.2d 506].) We have previously defined the term "school" as an academic institution conducting an educational program. It should have regularly scheduled classes, with required attendance, and qualified instructors. A degree program is not necessary.

The facts indicate that the programs taught at W--- C--- R---, including ElderHostel, are regularly scheduled and taught by people with the proper credentials. They appear to be post-secondary classes. You also indicate that the programs taught under the auspices of ElderHostel are organized by ElderHostel but actually taught by W--- C--- R--- personnel. ElderHostel provides college-level instruction. The facility is a county agency, and county employees sell the meals. It is, then, a public school selling meals within Section 6363. Thus we agree with your conclusion that the facility's sales of meals to its students and to the ElderHostel students are exempt from tax.

We also agree with your conclusion that Section 6363 does not exempt sales of meals by W--- C--- R--- to outside organizations to whom it rents the facility. Since the meals are apparently furnished as part of the rental, the measure of tax is the school's charge to the outside entity for the use of the facility. However, as we have no information on the rental terms, we render no specific opinion on them.

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