



STATE BOARD OF EQUALIZATION

January 14, 1966

Law Offices
F--- & W---
Suite XXX
XXXX --- Boulevard
--- ---, California

Attention: Mr. J--- G. F---

SR -- XX XXXXXX

Gentlemen:

This is to inform you of our conclusions with respect to the petition for Redetermination of sales tax of the above named taxpayer. We are recommending to the board that tax be redetermined by deleting from the measure the items protested in your petition.

We agree with your contention that the taxpayer did not provide any service in connection with the sale of food items. Rather, the taxpayer sold prepackaged items which the customer was required to take from vending machines and stands. The tables and chairs were at all times provided by the plant owner, E--- Industries, Inc. We believe the taxpayer was a mere licensee on the premises allowed to make sales to E--- Industries' employees. It had no rights in the building or in the tables and chairs such as would be created by a landlord-tenant relationship. For these reasons we believe the sales were of exempt food products.

At the hearing we also discussed the application of the recent amendment of § 6359 of the Sales and Use Tax Law to your client's business. Section 6359 now provides,

“None of the exemptions provided for in this section shall apply:...(b) 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,” (Emphasis ours.)

This change in the food products exemption was made in order to tax industrial caterers and cafeterias. We believe your client's arrangement with E--- Industries constitutes a contract for the furnishing of food products. E--- Industries has agreed to allow your client to place a food selling operations on its premises. In consideration of this the taxpayer has brought in vending machines and stands and maintains there a stock of food products for sale during working hours. It also has agreed to pay 4 per cent of its gross to E--- Industries for the privilege or license of using the

premises. While there may not be the formality of a written contract, we believe this agreement between the parties constitutes a contract within the meaning of the section. Accordingly, starting September 17, 1965, the effective date of the amendment, the tax applies to such sales of food products.

Our recommendations will be presented to the board at their next regular meeting for their consideration. You will receive official notice of their action in due course.

Very truly yours,

John H. Knowles
Associate Tax Counsel

JHK:hm

cc: ~~Inglewood~~ West Los Angeles – Subdistrict Administrator

Attached are two copies of the Report of Hearing Officer dated December 24, 1965, which has been approved. This hearing was held in West Los Angeles on September 30, 1965.