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July 3, 1996

Mr. D--- A---
 Credit Manager
 Los Angeles A--- ---
 XXXX West --- Boulevard
 --- ---, California XXXXX

Re: Los Angeles A--- M---

Dear Mr. A---:

You letter dated April 4, 1996, to Mr. David H. Levine, Supervising Tax Counsel, has been referred to me for response. You ask whether the Los Angeles A--- M---'s ("M---") charges for catering functions for groups from the following organizations are subject to tax: 1) federal government (i.e. Air Force, Department of Defense, Red Cross); 2) churches and religious organizations; 3) insurance companies; 4) State of California; 5) other states; 6) California school districts; 7) out-of-state school districts; 8) nonprofit organizations; and 9) cities.

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) The term "sale" means any transfer of title or possession of tangible personal property for consideration. (Rev. & Tax. Code § 6006(a).) A sale at retail means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Although the retailer owes the sales tax, the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1651.1.)

A caterer is a person engaged in the business of serving meals, food, and drinks on the premises of the customers or on premises supplied by the customers. (Reg. 1603(h).) Tax applies to the entire charge made by the caterer for serving meals, food, and drinks, including all charges for food, use of dishes, silverware, glasses, chairs, and tables used in conjunction with serving meals, as well as the charge for the labor of planning and serving the meals, whether performed by the caterer or by the caterer's employees or subcontractors. (*Id.*) Similarly, tax applies to the sales of meals or hot prepared food products furnished by restaurants whether served on or off the premises. (Reg. 1603(a).)

E. L. Sorensen, Jr.
 Executive Director

Tax applies to the entire charge by M--- for catering functions for each of the organizations listed above unless the sale is specifically exempt from taxation by statute. With regard to sales to groups from churches and religious organizations, State of California, other states, California school districts, out-of-state school districts, nonprofit organization, and cities, there is no applicable statutory exemption for the sales by M--- to these organizations. Therefore, M---'s sales to such organizations are subject to tax. (See BTLG Annots. 390.0020 (8/24/64), 390.0040 (2/20/63), 530.0260 (3/23/60).)

Additionally, M---'s sales to insurance companies are also subject to tax. Insurance companies doing business in this state are liable for an annual tax imposed by California Constitution Article XIII, Code section 28, in lieu of all other taxes and licenses upon such insurers and their property, with certain exceptions not applicable herein. (See also Rev. & Tax Code § 12102.) However, sales tax is imposed on the retailer and not the purchaser. Therefore, sales tax applies to M---'s retail sales to insurance companies and M--- may collect sales tax reimbursement from the insurance company if the contract of sales so provides. (See Rev. & Tax. Code § 6051; see also Civ. Code § 1656.1.)

Lastly, Revenue and Taxation Code section 6381 provides that sales to the United States and to its unincorporated agencies and instrumentalities such as the Air Force, Department of Defense and American National Red Cross are exempt from tax. However, in order for M---'s sales to groups from a United States instrumentality to be exempt, M--- must substantiate that the purchases are official purchases of the United States instrumentality and that the groups are authorized by the United States instrumentality to purchase the catering from M--- on behalf of the United States instrumentality. Copies of appropriate purchase orders, payment vouchers or other appropriate documentation showing that the purchases are made by the groups on behalf of the United States instrumentality generally meet this requirement. (Reg. 1614.) If M--- is unable to acquire sufficient proof that the purchases are official purchases of a United States instrumentality, the sales to such groups are regarded as sales to individual employees of such organizations and are properly subject to tax.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:rz

cc: --- --- District Administrator (--)