


STATE BOARD OF EQUALIZATION

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November 9, 1992

Mr. R--- J. F---
 G--- E---, Inc.
 XXXX --- Drive
 --- ---, California XXXXX

Re: SY -- XX-XXXXXX
 Sales of Foods to Residents of
 Institutions

Dear Mr. F---:

I am responding to your letter to the Legal Division dated September 17, 1992. You ask for a ruling on the application of sales tax to your company's sales of foods to retirement center residents. We note that the Board staff cannot issue tax rulings; only the Board itself may do that. However, we can give you our opinion regarding the correct application of tax to a given set of facts.

I. FACTUAL BACKGROUND

You describe the factual background of your problem as follows:

"G--- E---, Inc. ["G---"], is a food service management company with operations throughout California. We are contracted by clients to provide food service on the premises of our clients, typically larger corporations. In addition, we also offer the same services to retirement centers where a central dining room is used by the residents at meal time. The cost of the meals are included in the residents monthly rate and is collected by the institution.

"We have been asked to provide the same services at another retirement complex, but with a different financial arrangement. In this case, the residents pay for their meals when they eat in the dining room. We would be responsible for the collection. The other variable is the minimum age requirement of the residents is 55 years."

OPINIONA. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ..." (§ 6091.) "Exemptions from taxation must be found in the statute." Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 P.2d 201.] The taxpayer has the burden of showing that he clearly comes within the exemption." Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Food Products Exemption.

Section 6369, interpreted and implemented by Regulations 1602 and 1603, provides an exemption from sales and use taxes for sales of food products for human consumption under certain circumstances. (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) The general rule is that sales of foods in a form suitable for consumption at facilities provided by the retailer or the person with whom the retailer contracts are subject to tax. (Regulation 1603(f).)

As you are aware, however, Regulation 1603(m), which interprets and implements Section 6363.6, provides an exemption for sales to institutions as follows:

"Tax does not apply to the sales of, nor the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by patients or residents of an 'institution' as defined in Regulation 1503. Tax, however, does apply to the sale of meals and food products by an institution to persons other than patients or residents of that institution."

Regulation 1503(a) defines an "institution" as a health, community care, or alcoholism or drug abuse recovery or treatment facility, all as described in the Health and Safety Code; or any house, retirement home or similar establishment supplying board and room for a flat monthly rate and serving as a principal residence exclusively for persons 62 years of age or older.

C. Tax Consequences to G---.

You do not give the minimum age of the residents of the retirement centers you mention in the first paragraph but you do indicate that the cost of the meals is included in the residents' monthly rate and is collected by the institutions. Therefore, if the residents' minimum age is 62, G---'s sales of meals to the residents of such institutions are exempt from tax under Regulation 1603(m).

In the second paragraph, you indicate that the minimum age for the residents of the complex described therein is 55 and that they pay for their meals when they eat in the dining room. Generally, it doesn't matter under Regulation 1603(m) whether the retailer sells the meals directly to the patients or to the institution which then sells the meals to its residents. The fee must, however, be a flat monthly rate. Here, the minimum age is 55 and the meals are sold on a "pay-as-you-go" basis, so G---'s sales of meals to the residents of this institution would be subject to tax.

For your information, I have included copies of Regulations 1602 and 1603. 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

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Enclosures: Regs. 1602 & 1603