



STATE BOARD OF EQUALIZATION

March 8, 1966

Mrs. E--- F. L---
XXXX --- Avenue
--- ---, CA XXXXX

SR -- XX XXXXXX

Dear Mrs. L---:

After receiving your most recent correspondence and attachments, we have made a further review of your petition for redetermination of sales and use taxes.

We have concluded that the information presented together with your previous explanations should be accepted as sufficient evidence that the billings for bartenders were made only as an accommodation for your customers. However, our conclusion on this item is expressly limited to the period covered by the deficiency determination. For future periods, you should retain in your files letters from your customer and the bartenders sufficient to evidence that their employment was solicited by the customer directly. This should be done for each catered transaction. If such evidence is not retained, these amounts will hereafter be included in the measure of tax as part of your charges for serving meals, food and drinks. (See sales and use taxes ruling 53, paragraph (e), copy enclosed.)

We have also given further consideration to your contention that the amount identified as item B of the report of field audit, measure of tax \$5,258 included charges for services not connected with the service of food and drinks. We understand that these charges were billed as "waitresses," and claimed on your sales and use taxes returns as "labor." Notwithstanding the opinion expressed in our letter of December 6, 1965, we shall exclude charges for such services as parking attendants, security guards, wrap attendants, etc., provided you can identify the particular charges involved and are willing to affirm that the personnel who performed these services did not also participate in the service of food and drinks.

We fail to understand the basis for the statement contained in your recent letter that some of the item 2 charges (item B of the report of field audit) "are so far afield of my records they seem to be arrived at by conjecture and imagination." The amounts included in this category reconcile completely with the amounts claimed on your sales and use taxes returns as "labor" for the audit period. However, if you can point out any specific instances where the figures are incorrect, appropriate adjustments will be made.

We summarize the results of our review and further action to be taken as follows:

1. Item A of the report of field audit, measure of tax \$1,412, is to be deleted as a sale of exempt food products.
2. Item D of the report of field audit, measure of tax \$5,294, is to be deleted as representing amounts billed as an accommodation for customers.
3. No adjustment will be made for any of the charges identified in the report of field audit as item B, measure of tax \$5,258, unless charges not connected with the sale of catered food and drinks are identified and presented to the field staff for verification.

Further action on this matter will be delayed for an additional thirty days to allow time for you to accumulate and make available the required information to support an adjustment to item B. If such information is not made available in this period, the reaudit will be completed as indicated above.

Very truly yours,

W. E. Burkett
Associate Tax Counsel

WEB:em
Enclosures
Cc: Mr. Fred T. Larsen
Inglewood – Subdistrict Administrator

The action indicated with respect to the charges for parking attendants, security guards, wrap attendants, etc., represents a change of the position expressed in our letter of December 6, 1965. This was done after further review and discussion of the application of the law and ruling with Tax Counsel E. H. Stetson. I might add that I am not completely satisfied with the evidence offered to establish that the charges for bartender were mere accommodation billings. However, weighing the amount involved and other considerations, I have concluded that the proper approach is to accept the taxpayer's explanations and evidence and place her on notice as to what will be required to document this for future periods.

WEB