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**STATE BOARD OF EQUALIZATION**

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 Executive Director

November 9, 1995

Board of Directors  
 B--- B--- Culture Center  
 XXXX --- Lane  
 --- ---, CA XXXXX

Re: Sales of Meals by Religious Organizations

Dear Board Members:

This is in response to your letter dated September 7, 1995, in which you inquire about the application of sales tax to vegetarian lunches that your church plans to sell to members of your congregation.

On October 22, 1995, your church plans to open and operate a cafeteria which will serve vegetarian lunches "to provide healthy food for members, senior citizens and people who seek [a] better health condition." We assume that this cafeteria is located on the church's premises. According to your letter, the purpose of providing cafeteria services is to promote the congregation's "spiritual needs;" to "work in unity with fellow members;" and to provide a place for "social gatherings, meetings for our members and fundraising." You explain that the cafeteria will be staffed by volunteers and that all receipts from the sales of the lunches will be used for the operation and maintenance of the church's facilities. It is your stated intent that the cafeteria's use will be restricted to members of the congregation; however, you have also indicated that the cafeteria could be "used for senior citizen events or other community social services." Your specific inquiry is whether the sales of vegetarian lunches that will be served at the cafeteria are subject to sales tax.

Retail sales of tangible personal property in California are subject to sales tax, which is measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Revenue and Taxation Code section 6359 provides the general exemption for certain sales of food products. This exemption is explained in Regulations 1602 and 1603, copies of which are enclosed.

Section 6359(a) states the general rule that sales of food products for human consumption are exempt from tax. However, subdivision (d) of section 6359 contains a list of circumstances in which the sales of food products are not exempt from tax. The circumstances relevant to your inquiry are:

- "(1) When the food products are served as meals on or off the premises of the retailer.
- "(2) 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."

Thus, based on your description, your sales of food products for human consumption do not qualify for the exemption provided by section 6359. However, your church's sales might be exempt from tax under section 6363.5. Subdivision (l) of Regulation 1603 explains this exemption:

"Tax does not apply to sales of meals and food products for human consumption furnished or served by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in furnishing or serving the meals and food products is to obtain revenue for the functions and activities of the organization and the revenue obtained from furnishing or serving the meals and food products is actually used in carrying on such functions and activities. For the purposes of this regulation, 'religious organization' means any organization the property of which is exempt from taxation pursuant to Subdivision (f) of Section 3 of Article XIII of the State Constitution."

We assume that the vegetarian lunches that you intend you sell to members of the congregation are served in conjunction with gatherings and events conducted by the church on behalf of the congregation and that the purpose of these sales is to obtain revenue for carrying on the functions of the church. We also assume that the church qualifies as an organization, the property of which is exempt pursuant to Subdivision (f) of Section 3 of Article XIII of California's State Constitution. Based on these assumptions and the facts of your letter, we conclude that the church's sales of vegetarian lunches to members of the congregation for consumption on its premises will not be taxable.

You have indicated that the cafeteria could be "used for senior citizen events or other community social services." If you intend to open the cafeteria to the public on a regular basis, sales by the cafeteria during these periods will not be eligible for the exemption provided by section 6363.5, regardless of the fact that the receipts will be used for the church's operation and maintenance. (Business Taxes Law Guide Annotation 550.1040 (2/28/63).)

If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen  
Senior Staff Counsel

PHJ:cl

Enclosures (Regs. 1602 & 1603)

cc: Sacramento District Administrator