



STATE BOARD OF EQUALIZATION

(916) 322-6083

November 12, 1976

Attention:

Re:

Gentlemen:

This is in reply to your letter dated October 14, 1976, concerning the application of California sales tax to certain sales of meals and food products by your company.

In your first situation, the Federal government funds a public school for a summer lunch program. The school hires you to prepare and distribute the food. The school claims that no tax is due on your sale of these meals. It is our opinion that if all payment to you is from the school, no tax is due. This is because you will be selling meals to the school for resale to the Federal government. If there is a charge payable to you by the person consuming the meal, tax will apply only to that charge. See Szabo Food Service, Inc., of California v. State Board of Equalization, 46 Cal. App. 3d 268.

In your second situation, the Federal government provides funds to a college or other school for aiding needy students. The college issues "meal tickets" to students needing financial aid. The value of the meal ticket is determined by needed. _____ provides meal service for the college. A student with a full value meal tickets receives a free meal upon presentation of the ticket; a student with a half value meal must pay half the cost of the meal upon presentation of the ticket. The school reimburses you on a monthly basis for the value of the meal tickets. The school claims that its payment to you and the amounts paid by students are exempt from tax. From this description, it is not our understanding that the Federal government is providing funds specifically for food, but rather for general assistance. The school cannot therefore content that it is buying food or meals for resale to the Federal government. If the school has an obligation to provide meals to the individual students, such as a board contract, the school is buying from you for resale to the students. No tax would apply to the amounts paid to you to redeem the meal tickets. Tax does apply to the amounts you receive from individual students unless this is paid over to the school. If the school has no obligation to provide meals to the individual students, the school is merely paying an obligation of the individual student, and the sale by you is a retail sale to the student. Tax would be due on your receipts from the students and from the school. The Szabo case would not apply since the amount paid to you by the school can be traced to individual transactions.

In your third situation, you contract with an employer to provide food service to his employees. No charge is made to the employees. The employer claims exemption from tax under Sales and Use Tax Regulation 1603(j)(2). It is our opinion that sales to the employer are not exempt because you, rather than the employer, are serving the meals. The exemption applies only if the employer serves the meals. You are selling meals to the employer who is giving the meals to his employees. The giving of a gift is considered to be consumption by the donor. The employer is therefore the consumer of the meals, and your sales of meals to him are retail sales.

Very truly yours,

H. L. Cohen
Tax Counsel

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