

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-6450

January 17, 1992

Mr. R--- M. G---
Owner
M---'s Restaurant, Catering
and Party Productions
XXXX --- Boulevard
---, CA XXXXX

Dear Mr. G---:

This is in reply to your November 18, 1991 letter regarding the application of use tax to charges you make in connection with your catering company. You note:

“It is respectfully requested that you provide written tax advice on the following items:

“(1) TENTS, SUB-FLOORING, ASTROTURF, CANOPIES, GENERATORS, AIR COMPRESSORS, FENCES, DANCE FLOORS, STAGES, SCREENS, GARDEN FOUNTAINS, ESTANTIONS, ETC.

“(2) LABOR TO INSTALL ABOVE MENTIONED ITEMS.

“(3) SERVICE TO INSTALL TEMPORARY LIGHTING, HEATING AND ELECTRICAL.

“These items are periodically rented from a local concern who had advised us that they had paid sales tax on these items at the time of purchase.

“These items have nothing to do with the food or the service of the food. They are part of the Party Productions end of our business. We are a full service catering company and put on many events, including weddings with a theme behind them. For example, Tahitian Weddings, County Ho-Downs, Winter Wonderland

Christmas Parties, Central Park U.S.A. a Welcome home for our Troops, and the list goes on....

“Other such items we periodically use are video screens, podiums, gazebos, p.a. systems and carpet runners. We also have use of entertainers and other personnel and services such as clowns, disc-jockeys, photographers, dancers, ice sculptures, ministers, limousine services, painters and parking attendants.”

You note that the items have nothing to do with the food or the service of the food. As to some of the items you listed, we disagree with your conclusion if you provide the items in connection with your serving of meals. If you rent a tent, subflooring, astroturf, canopies, and generators and air compressor to provide a customer with a temporary sheltered place (facility) in which you provide a meals, your charge for the facility is included in the taxable gross receipts of its sales of meals just as a restaurant’s charge for the use of the dining room is includable in the gross receipts of its sales of meals. You do not lease such a facility to your client, rather you use the items in connection with your sale of the meals. Your taxable gross receipts include the total charge for the facility and the labor to install the items and the temporary lighting, heating, and electrical fixtures. Similarly, your charge to the customer for a painter who paints the facility or for a parking attendant is subject to tax.

You note that you have received advice from Board of Equalization staff that tax would not apply to your charge for the items rented if tax was previously paid. In such case, we assume that you are only leasing the property to the customer and not providing meals. In this regard, Sales and Use Tax Regulation 1660, Leases of tangible Personal Property-In General, provides at subdivision (C)(5):

“Tax does not apply to receipts from subleases of tangible personal property which is leased in substantially the same form as acquired by the prime lessor where the prime lessor has paid sales tax reimbursement or use tax measured by his purchase price. Also, tax does not apply to subleases of tangible personal property if the tax is paid on rental receipts derived under the prime lease, or any prior sublease.”

For example, if you rent equipment from a rental shop which has paid sales tax reimbursement or use tax measured by its purchase price, and you sublease the equipment to a customer without serving food or drinks, tax does not apply to your charge for the lease of the equipment.

The tax applicable to leases is the use tax which is imposed upon the lessee. If you rent equipment from a rental shop which does not collect use tax on the lease receipts, you should insist that the lessor note on the invoice why the tax does not apply. See Sales and Use Tax

Regulation 1686, Receipts for Tax Paid to Retailers, subdivision (b), copy enclosed. You must also so note on your invoice to your customer, the sublessee.

Further, if you cater meals at an event, tax does not apply to your charge for entertainers or for the sublease of such tax-paid equipment when the customers have specifically ordered the entertainers or equipment and they are not customarily provided in connection with the preparation and furnishing of food. (Bus. Taxes Law Guide Annot. 550.0850.) From your list of items you provided, such equipment would be the dance floors, stages, screens, garden fountains, video screens, podiums, gazebos and p.a. systems.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

bc: --- District Administrator