STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

(916) 445-6493

January 23, 1984

Dear REDACTED TEXT,

Your letter of October 26, 1983 to the Board has been referred to me for reply. You request our opinion as to the correct application of tax to your sales of meals and food products at schools and colleges.

We understand that REDACTED TEXT is an independent food service contractor which operates food service facilities at schools and colleges. Your inquiry concerns the following described sales transactions which occur at these school facilities:

"1. Cash Sales – Food and beverage sales made directly to students and faculty members. Our company retains all receipts.

"2. Charge sales – Students purchase meal tickets from the school or college as part of their room and board plan. Meal tickets are redeemed by our company at the school cafeteria and the school is billed directly, by our company, for each ticket redeemed at a predetermined price per meal.

"3. Special Event Sales – Our company provides catering services at school functions and events and bills the school directly. These services are also made available to student organizations.

"4. Vending Machine Sales – Our company sells food, beverages, snacks and cigarettes through vending machines located on school premises."

Section 6051 of the Revenue and Taxation Code imposes a tax on retailers based on gross receipts from the "sale" of tangible personal property sold at retail in this state. The term "sale" is defined under section 6006 (d) to include the furnishing, preparing, or serving for a consideration of food, meals or drinks. A sale for any purpose other than resale in the regular course of business in the form of tangible personal property is a "retail sale" for "sale at retail" (Section 6007). Therefore, in our opinion tax applies to the gross receipts from REDACTED TEXT's retail sale of meals, foods, beverages and other tangible personal property described under transactions 1 through 4 listed above, unless such gross receipts are otherwise exempt from taxation from taxation. Pertinent here is the exemption provided under Revenue and Taxation Code Section 6363, and the grandfather clause provisions under AB 399 relating to vending machine sales.

Section 6363 exempts from tax the gross receipts from the sale of meals and food products for human consumption furnished or served to the students of a school by a public

or private school, school districts, or student organization. The exemption is available only to these described education and student organizations. In our view, students receiving board from a school or college are considered to be purchasing meals in the school cafeteria or dining facility from the school rather than from the operator of the cafeteria or dining facility, provided: (1) the students contract only with the school or college for the board, (2) all payments for meals and food products are made directly to the school or college, and (3) the school or college is solely responsible for providing board to the students. To the extent the sales of meals and food products described under transaction 2 ("Charge Sales") represent such board meals, REDACTED TEXT's gross receipts received from the school may be regarded as receipts from sales at resale, and that the receipts received by the school for the student's board meals are exempt from tax by virtue of Section 6363.

Concerning REDACTED TEXT's sale of tangible personal property through vending machines (transaction number 4), we assume that REDACTED TEXT is the operator of the vending machines located on the school premises. Therefore, effective August 1, 1983, tax applies to the gross receipts from REDACTED TEXT's sale of hot and cold food products, and other tangible personal property through vending machines, regardless of the price charges for such items.

Prior to August 1, 1983, a partial exemption was available to sellers of cold food products, candy nonmedicated chewing gum and breath mints through vending machines, i.e., tax applied to only 33 percent of the gross receipts from such sales. Also, prior to this date, all sellers of merchandise through vending machines for 15 cents or less were considered consumers rather than retailers of such items. However, under certain circumstances, a vending machine operator can presently report and pay sales tax on gross receipts to the same extent and under the same conditions as required under Sales and Use Tax Law on July 20, 1983 (AB 399, Section 363. and 36.5, Stats. 1983, Ch. 1102).

Although you have not provided sufficient information in your letter regarding any contracts entered into prior to July 21, 1983, the general rules regarding the application of Sections 36.3 and 36.5 of AB 399 to sales through vending machines are as follows. In regards to sales of cold food products through vending machines, the application of tax under the law as it existed on July 20, 1983 is available to vending machine operators who are obligated to sell food products through a vending machine for a fixed price pursuant to a contract entered into prior to July 21, 1983, provided (1) neither party to the contract has the unconditional right to terminate the contract upon notice, and (2) the price of the item sold is not increased after July 21, 1983. In regards to sales of merchandize for 15 cents or less through a vending machine, the vending machine operator will be considered the consumer of such items, provided (1) the sale is pursuant to either a fixed price contract or fixed term contract entered into prior to July 21, 1983, (2) the property is sold for 15 cents or less, and (3) it is sold for the same price charged for the property on July 21, 1983.

If you have any further questions concerning this matter, please write this office.

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba