STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

(916) 324-3828

March 28, 1991

Dear REDACTED TEXT,

Your letter of January 31, 1991, to the Legal Division has been assigned to me for a response. You have questions regarding the definition of the term "meals" as it relates to food service in student cafeterias, and also of the applicability of sales and use tax to sales of soft drinks when they are part of those meals.

OPINION

As I understand it, the Food Service Department of the REDACTED TEXT (hereinafter REDACTED TEXT) provides lunch for the schools in the District. The snack bars during lunch are run by the Food Service Department rather than by a caterer on contract to REDACTED TEXT. The snack bars, as well as the cafeteria during lunch, serve meals qualified as per the California Child Nutrition Department guidelines-i.e., the meals contain at least three of the four food groups. Apparently, students can obtain soft drinks as part of their meals or separately, either over the counter or through vending machines. I assume that the term "soft drinks" means carbonated drinks such as Coca-Cola or Nehi, rather than fruit juices, etc.

Revenue and Taxation Code Section 6359, interpreted and implemented by Regulations 1602 and 1603, provides an exemption from sales and use taxes for the sales of food products for human consumption under certain circumstances. Subdivisions (1) & (2) of Regulation 1602(a) contain a list of products which, either singly or in combination, are considered "food products". Carbonated beverages are, however, excluded from the definition of "food products". (Reg. 1602(a)(2).) Thus, sales of such products are subject to tax unless and exemption applies.

1. What is a Meal Anyway?

You ask the following question: "What guideline is used to determine the qualification of a meal?"

Unfortunately, there is no single test to determine what is a meal. The conclusion may vary depending on the facts. Although a "meal" could, in some contexts, consist of as little as one sandwich if it were served in good faith as a meal (Hart's Drive-In Corp. v. State Bd. of Equalization. (1956) 145 Cal.App.2d 657, 659, [303 P.2d 248]), the term generally connotes different food items being served together. The California Supreme Court made the following comments on this issue:

> "The generally accepted concept of a meal is that it not only consists of a larger quantity of food than that which ordinarily comprises a single sandwich, but that it usually consists of a diversified selection of foods which would not be susceptible of consumption in the absence of at least some articles of tableware, and which could not conveniently be consumed while standing or walking about."

Treasure I. C. Co. v. State Bd. of Equal. (1941) 19 Cal.2d 181, 186 [120 P.2d 1]. The selection is not limited for sales and use tax purposes to those listed in the Child Nutrition Department's guidelines.

2. Sales of Soft Drinks.

You ask the following questions: "[Are we] exempt from tax on soft drinks that are served during lunch?"

As you are aware, although Regulation 1603(j)(2)(A) provides that a school district's sale of a meal to a student is exempt from tax, a carbonated beverage is not a "food product". (Reg. 1602(b)(2).) This means that sales of carbonated beverages are not exempt, even if sold to students, unless they are sold as part of exempt meals. We have recently determined that the sale of a carbonated beverage is part of the sale of a "meal" to a student when the combination is sold for a single established price. If a single price for the combination of a carbonated beverage and the rest of the meal is listed on a menu or wall sign, a single price has been established.

In your case, take the example of a sandwich and a soft drink (which we have previously concluded is a "meal" in other contexts (Annot. 550.0160)) sold to students at lunch time. If sold together for a single established price, the sale of the soft drink is exempt as part of the sale of a student meal. If the student is charges separately for the items, even though they are all rung up at the same time, tax applies to the sale of the soft drink. Sales of soft drinks are always taxable when only the soft drink is being sold.

You indicate that the interpretation of Annotation 550.1680 has caused you some confusion. Perhaps, this is due to the fact that the opinion letter underlying the annotation was not written to advise a school regarding the taxability of the sales of soft drinks. It was written to a soft drink company which needed to know when it could accept a resale certificate in order to sell soft drinks to schools, etc., without having to pay sales tax and collect sales tax reimbursement on the transaction. The annotation is saying that a school may purchase all of the drinks free of tax as being for resale even though some of their ultimate sales to the students would be exempt if sold as part of student meals.

REDACTED TEXT, then, may purchase the soft drinks from its suppliers free of tax by giving them resale certificates substantially conforming to the requirements of Regulation 1668. REDACTED TEXT must pay sales tax and may collect sales tax reimbursement on its sales of those soft drinks that it does not sell as part of student meals, as defined above.

You apparently have a copy of Regulation 1603, so I am enclosing copies of Regulations 1602 and 1668 only. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es
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Enclosure: Regs. 1602 & 1668

cc: Mr. Glenn A. Bystrom, Principal Tax Auditor