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**STATE BOARD OF EQUALIZATION**

916-445-2705

November 24, 1976

Dear Mr.

Your letter of November 10 explains that your client operates restaurants in California. As a regular part of their quality control program, your client contracts with individuals to act as "confidential shoppers." Under this contract, the individuals eat at various clients' restaurants and pay cash for the meals eaten. The separate restaurants' personnel are not notified that the individual is purchasing the meal as a "confidential shopper." After the meal and its payment by the individual, the individual provides your client with a report of quality related matters at the restaurant so visited and in return is completely reimbursed for the meal purchased.

Your client is selling meals to the individuals operating as confidential shoppers notwithstanding the contract calling for the report. The sale of the meals result from the service of meals for a consideration, c.f., Revenue and Taxation Code Section 6006(d). Accordingly, the food products cannot be considered consumed by your client for the purposes of the Sales and Use Tax Law.

The second question is the amount of gross receipts from the sale of the meal. Impliedly, the meals are sold for ordinary prices available to other customers. Presumably, additional payments to the confidential shoppers are for the report, and, conversely, the report is supplied in return for the other payments, and not for the meal or its reimbursement.

Very truly yours,

Philip R. Dougherty  
Tax Counsel

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