



STATE BOARD OF EQUALIZATION

March 7, 1966

W--- and S---
Certified Public Accountants
XXXX East --- Boulevard
---, California XXXXX

Attention: Mr. L--- M. W---

SR -- XX XXXXXX
C--- I---, Inc.

Gentlemen:

This is to inform you of our conclusions with respect to the above named taxpayer's petition for redetermination of sales tax. We regret that we must recommend that the petition be denied and the tax redetermined without adjustment.

At issue in this case is whether a credit, allowed by the taxpayer to hostesses who hold parties at which independent contractor salesmen take orders for merchandise, may be deducted from the measure of sales tax. In order to obtain the credit, the hostess must provide her house, invite friends, and deliver the merchandise ordered at the party. We find that the hostess performs these services in order to receive the credit. The services are bargained for and given in exchange for the merchandise which she receives. The measure of tax is defined by § 6012 to be the total amount of the sales price, "valued in money, whether received in money or otherwise." This section specifically provides that the sale price includes "any amount for which credit is allowed by the seller to the purchaser." Accordingly, the measure of tax must include the total consideration given on hostess orders and not merely the net cash amount.

The order form states the selling price of the items ordered by the hostess, deducts the amount of the credit, and the cash balance accompanies the order. Thus, the parties have set the value of the hostess' efforts as well as the amount of cash consideration. (Cf. Hawley v. Johnson (1943) 58 Cal. App. 2d 232 [136 P.2d 638].)

This is not a gift situation. The hostess knows beforehand that she will receive a credit in keeping with the results of her efforts as a hostess. She is entitled to the credit she earns and when she gives it up in consideration for the merchandise, it constitutes a portion of the merchandise's selling price. Since the amount of the credit is valued in money by the parties, we believe this amount must be recognized in valuing the consideration for sales tax purposes.

The only other provision of § 6012 which might be applicable is the provision for a cash discount deduction. The credits involved in this case are not cash discounts because they are not a discount given for payment in cash. Rather, they are given for the efforts of the hostess.

You have requested a board hearing in this matter. If you disagree with our conclusions and desire such a hearing, we will schedule it at your request. Please let us know within the next 30 days. If you no longer desire the hearing, please sign and return two of the enclosed waiver of hearing forms. The third copy is for your files.

Very truly yours,

John H. Knowles
Associate Tax Counsel

JHK:em
Enclosures

cc: Pasadena – Subdistrict Administrator