



390.0080

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

March 3, 1970

Dear Mr.

This is in response to your letter of February 24, 1970 addressed to our San Francisco office, which was referred to the undersigned for reply.

Your client is a fraternal organization which has dining room facilities which are used from time to time for the purpose of selling meals to the general public.

On rare occasions, perhaps once a year, the dining room facilities are used to provide members with a free banquet.

You had been advised by our San Francisco office that gifts of property are generally treated as taxable to the donor measured by his cost. You now ask if Regulation 1670 was intended to cover your situation.

The earlier advice you received was correct in general application. However, it does not apply to gifts of "food products" as defined in Revenue and Taxation Code Section 6359, even if they are given away in the form of meals. As provided in Regulation 1670(a), persons who make gifts are consumers, and tax applies to the sale of the property to the donors. Since the "food products" were not in the form of meals when sold to your client, the sale is exempt.

Tax does apply, however, to the gift of property which is not within the definition of "food products" which ordinarily would be served or supplied with the meal, such as alcoholic or carbonated beverages, paper napkins, ice, etc., (see ruling 52, copy enclosed).

A fraternal organization is defined as a "person" by Section 6005 for purposes of the Sales and Use Tax Law. Consequently, the members of the organization are "third parties" as to the organization as they are separate persons under the law.

My answer is based on the assumption that the persons preparing and serving the meals are employees of the club. If the meals are prepared and served by an independent contractor, such as a caterer, and his employees, tax would apply to amounts received by him from the organization for the free banquet.

Very truly yours,

Lawrence A. Augusta
Tax Counsel

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