

**STATE BOARD OF EQUALIZATION**

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April 7, 1992

Ms. C--- R---
Controller, W--- B---,
XXXX T--- Road
---, California XXXXX

RE: SR – XX-XXXXXX

Dear Ms. R---:

I am writing this in response to your letter to me dated February 7, 1992. At the suggestion of your accountant, Mr. T--- H--- of D--- and T---, you have requested a written opinion regarding whether or not separately-stated charges from the rental of W--- B---' conference center are included in the gross receipts subject to sales tax from its sales of meals to the conferees.

I. FACTUAL BACKGROUND

You describe W--- B--- convention operation as follows:

“W--- B--- has a conference center which it rents to individuals or companies to hold seminars/conferences. At these conferences meals are optional and available at a separate charge. When we invoice the customer, we charge room rental without sales tax and if food or beverage has been included in their conference, they are billed for this and sales tax is added.”

II. OPINION

A. Sales and Use Tax Generally

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) The definition of “gross receipts” includes the “cost of the material used, labor or service cost, interest paid, losses or any other expense.” (§ 6012(a)(2).) “[I]t shall be presumed that all gross

receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale....” (§ 6091.) The retailer owes the sales tax, but it may collect sales tax reimbursement from the purchaser pursuant to agreement. (Civ. Code § 1656.1.)

B. Room Rentals as Part of Gross Receipts

Purveyance of services is in itself not subject to tax. However, as the above authority makes clear, where services that are a part of the sale of tangible personal property are supplied, charges for those services are included in the gross receipts from the sale subject to tax. The general rule regarding room rentals is stated as follows:

“Separately stated charges for rental of real property are not deductible from gross receipts from the sale of meals where payment for the use of the facilities is required in order to obtain the meals and is a necessary part of the meal service.”

(Annot. 550.0260. Annotations are excerpts from previous Board staff opinion letters and serve as a guide to staff positions.)

C. Tax Consequences to W--- B---

We have long held the position that where the rental receipts involve the use of the room for purposes other than or in addition to the serving of meals, the purchase of meals is optional, and a separate charge for meals is made, the rental charges are excluded from the taxable gross receipts for the meals.

You stated that meals at the convention center are optional and that the price is separately stated. We assume that patrons pay the same rental rate whether or not they purchase meals. We thus agree with your conclusion that, under such conditions, W--- B---’ charges for rental of its conference center are not included in the gross receipts from the sale of the meals that it sells there to the conferees, sales of which meals are, as you note, subject to tax.

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