

M e m o r a n d u m**550.0100**

To: San Diego – Auditing (CLH)

Sacramento
June 6, 1962

From: Headquarters – Tax Counsel (WWM)

Subject: Meals Served to Farm Laborers in the Field

Thank you for your reminders of May 2 and 15, 1962. We have the following comments to make concerning your memorandum of March 15, 1962. You state that Mr. P--- H. T. R---, doing business as M--- S--- Country Club, is the retailer of meals served to farm laborers under the usual arrangement whereby the employing ranch owners withhold the usual contract price per man per day from the laborer's pay check and pay it to Mr. R---. Mr. R--- operates as an independent contractor in feeding the farm laborers. You state that breakfast and dinner are served in the "club house" for consumption at facilities provided by Mr. R---. It is clear that we regard the breakfast and dinner as meal servings.

In the case of lunches provided the laborers in the field where no facilities (such as tables, benches, or chairs) are provided, Mr. R--- (or his employees) prepare the meals and pack them in hot food containers, truck them to the field where the laborers are assembled, and the food dished out in much the same manner as is done at an army field mess kitchen. Each man's portion is dished out to him on a paper plate with plastic utensils, all of which are thrown away after he has consumed the meal. The consumption takes place sitting on the ground or whatever "natural facilities" are near where the truck is parked. The food in question is placed in "hot bulk food containers" and is dished out onto the paper plates of the laborers as they file past the truck. There is no question but what the ingredients furnished constitute a meal.

As you know, where permanent facilities are provided by the retailer, the sales tax even applies to non-meals. Where a meal is involved, we have held the sales tax to apply provided permanent facilities are provided by someone (the retailer or the employer). We have taken the position that where no taxable facilities are provided by anyone, either the employer or the caterer, that though a meal is sold, the meal is not served, and, therefore, the sales tax does not apply. In Hart's Drive-In Corporation v. State Board of Equalization, 1435 Cal. App. 2d 657, there is an indication that a meal is served where so-called nontaxable facilities are provided, as long as the meal is consumed on the premises of the drive-in (premises there included music, drinking fountains, rubbish receptacles, as well as the parking area). We feel, however, there is a

distinction where the premises are not that of the retailer and the surrounding “extras” referred to above, such as music, etc., do not exist. It is then reasonable to conclude that there is merely the exempt sale of food items rather than the taxable serving of a meal. We are also aware of how the court looked upon paper trays, but the general setting was considerably different and the court’s statement was somewhat hedged.

It is recognized that perhaps a view could be taken taxing the transactions at issue, but in view of our historical background of not taxing items laid out for immediate consumption on nontaxable facilities and removed from the retailer’s location, it appears very equitable and within the provision of the law not to regard as taxable, situations where even food items constituting meals are involved provided no traditionally taxable facilities exist and the items are not consumed on the premises of the retailer.

WWM:ml

cc: Mr. W. T. Denny