



STATE BOARD OF EQUALIZATION

February 13, 1951

H--- R--- Market
XXXX --- --- Street
---, California

Attention: Mr. N--- G---

Re: -- XXXXXX

Gentlemen:

Following receipt of your letter of August 22, 1950, we requested our Los Angeles District Office for a report concerning the nature of the facilities furnished to customers. This report has been received and upon the basis of the facts set forth in your letter of August 22, which are confirmed by the report which gives certain additional information, it is our opinion that: (1) the tax applies with respect to sales of fruit juices which are served in paper cups contained, however, in plastic holders; (2) the tax applies to receipts from sales of coffee or tea in crockery mugs; (3) the tax applies to sales of sandwiches, doughnuts, or other food product for the consumption of which the customer uses the counter or any other facilities furnished by you. The report from our Los Angeles District Office states that approximately 90 percent of the customers consume food standing at or near the counter.

We believe that the plastic cup holders and crockery mugs are properly included within the facilities enumerated in section 6359 of the Revenue and Taxation Code which excludes from the definition of "food products", for purposes of the exemption, drinks or foods furnished, prepared, or served for consumption at "tables, chairs, or counters, or from trays, glasses, or dishes, or other tableware provided by the retailer".

Even if it be assumed that none of your sales constitute sales of "meals", it does not follow that the tax does not apply because, as we have indicated above, our information is that facilities such as were enumerated in section 6359 are furnished.

In Treasure Island Catering Company v. State Board of Equalization, 19 Cal. 2d. 181, mentioned in your letter, the sales held exempt were those sales where the food was wrapped in a paper napkin and handed to the purchaser over a ledge or shelf. The sale of frankfurter and hamburger sandwiches were the only sales involved, tax having been paid in connection with the sale of the beverages. It was also held that the ledge did not constitute a "counter", under the meaning of section 6359, since the ledges were not intended to be used as counters due to the fact that a continued or general utilization of the ledges for such purposes would have interfered with the accessibility to plaintiff's foods by prospective customers.

The tax does not, in our opinion, apply with respect to your sales of sandwiches or doughnuts which are handed to customers and taken away for consumption or consumed without the use of your "counter", no tableware or other facilities being furnished.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph

cc: Wm. R. Thomson