



STATE BOARD OF EQUALIZATION

August 6, 1969

Mr. J--- S. W---
--- and ---
Attorneys at Law
X --- ---, XXth Floor
--- --- at --- ---
--- ---, CA XXXXX

SR -- XX XXXXXX
G--- J---

Dear J---:

This is with reference to the petition for redetermination filed on behalf of Mr. G--- J--- and the hearing held on the matter last July 16 in Hollywood.

The sole issue is whether Mr. J--- sold meals in the C--- P--- E--- Dining Room, and if so, were the sales subsidized by C--- P--- Corporation.

There seems to be no dispute as to the facts. C--- owned all of the facilities, fixtures and equipment used to operate the dining room.

The dining room was small, seating only about thirty persons. It was restricted to use by C--- executives and top talent, and although meal prices, set by C---, were average and reasonable, the operation showed a loss by reason of its small volume.

C--- purchased and paid for the food in its own name. C--- billed the patrons on its own invoices and received the money from the patrons.

Mr. J--- did not handle any money necessary to operate the dining room and was not held accountable to C--- for any. Mr. J--- did not set the prices to be charged for the meals and no meals were sold for cash. Instead the patrons signed a C--- chit for the meals they purchased.

All Mr. J--- received was a fixed weekly wage for supervising the preparing and serving of the meals.

C--- personnel made all disbursements, including the reporting and payment of applicable excise taxes. It paid all appropriate employees taxes on behalf of Mr. J---. The latter included the employment of two waiters and one busboy who were carried, for union appearances, as employees of Mr. J---. Mr. J--- did not select them as employees, he did not fix their wages, and he could not fire them.

It is our conclusion that Mr. J--- did not sell the meals in question. Since he did not own the food before or after it was sold, did not receive the receipts from the sale, did not have any say in the financial operations of the dining room at all, it is difficult to see how he can be construed as having sold the meals on his own behalf. In any event, it is our opinion that he did not receive any subsidy, and since tax was reported and paid on the sums charged the patrons, there is no liability on Mr. J---'s part in the operation of the dining room.

Accordingly, we are going to recommend that the petition for redetermination be granted and the measure of tax be deleted.

Sincerely,

Robert H. Anderson
Tax Counsel

RHA/vs