



STATE BOARD OF EQUALIZATION

December 9, 1963

Dear Mr. _____,

This is in reply to your letter of November 11, 1963 stating your position that Assembly Bill No. 1543, amending section 6359 of the Revenue and Taxation Code, was not intended for application to the "carhop" type of "drive-in" establishment, but only to what you describe as a "self-serve drive-in."

I have consulted with Mr. Robert Hamlin, Chief Counsel, whom you said you believe would substantiate that the intent of Assembly Bill No. 1543 was as you state, but he is unable to do so. We believe, however, that the competitive problem which seems to be your chief concern has been largely solved by the provisions of ruling 53(g) relating to so-called bulk sales. These provisions permit an operator of any type of establishment maintaining parking facilities for consuming food purchased from the operator to claim a deduction for sales of food in bulk containers in a quantity and in a form obviously not intended for consumption on the premises.

We would think that this test would be adequate for the "carhop" type of drive-in with which you are concerned. Those which have a coffee shop, dining room, "take-out" service department, retail bakery department would, it seems to us, sell food at these departments in bulk containers and in a form and quantity obviously not for consumption on the premises, and would properly claim such sales as exempt.

The law as finally passed by the Legislature applies specifically to an establishment "at which parking facilities are provided primarily for use of patrons in consuming the products purchased at the location." To us, an establishment providing carhop service is clearly within this definition.

Very truly yours,

E. H. Stetson
Tax Counsel

cc: Hon. Richard Nevins
Mr. Harry L. Say

EHS:fb