

We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Ms. Leila Hellmuth, Supervisor, Business Taxes Committee Team at (916) 322-5271.

Sincerely,

Jeffrey L. McGuire, Chief
Tax Policy Division
Sales and Use Tax Department

JLM: llw

Enclosures

cc: (all with enclosures)

Honorable Betty T. Yee, Chairwoman, First District (MIC 71)
Honorable Jerome E. Horton, Vice Chair, Fourth District
Honorable Michelle Steel, Member, Third District
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel
Ms. Barbara Alby, Acting Member, Second District (MIC 78)

Via E-mail:

Mr. Alan LoFaso, Board Member's Office, First District
Mr. Gary Qualset, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Ms. Regina Evans, Board Member's Office, Fourth District
Mr. Doug Anderson, Board Member's Office, Fourth District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Ken Maddox, Board Member's Office, Third District
Mr. Neil Shah, Board Member's Office, Third District
Ms. Elizabeth Maeng, Board Member's Office, Third District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Mr. Ramon J. Hirsig
Ms. Kristine Cazadd
Ms. Randie L. Henry
Mr. Jeff Vest
Mr. David Levine
Mr. Randy Ferris
Mr. Bradley Heller
Mr. Cary Huxsoll
Mr. Robert Tucker
Mr. Todd Gilman
Ms. Laureen Simpson
Mr. Robert Ingenito Jr.
Mr. Bill Benson

Ms. Freda Orendt
Mr. Stephen Rudd
Mr. Kevin Hanks
Mr. James Kuhl
Mr. Geoffrey E. Lyle
Ms. Leila Hellmuth
Ms. Lynn Whitaker
Ms. Cecilia Watkins

SECOND DISCUSSION PAPER
Proposed revisions to Regulation 1506, Miscellaneous Service
Enterprises, regarding sales of meals at summer camps

I. Issue

Should Regulation 1506, *Miscellaneous Service Enterprises*, be revised to clarify when summer camps' sales of meals qualify for exemption from tax as sales of student meals?

II. Staff Recommendation

Staff recommends amending Regulation 1506, subdivision (h), *Summer Camps*, to provide that, in order to qualify for the exemption for sales of meals to students, a camp must be an "organized camp" as defined in California Health and Safety Code section 18897 and a school or educational institution. Staff recommends changing the title of the subdivision to "Organized Camps" and adding examples describing a camp that qualifies for exemption and a camp that does not qualify. In addition, staff recommends clarifying the requirement that camps segregate their taxable gross receipts. See Exhibit 1 for staff's proposed amendments.

III. Other Alternative(s) Considered

Do not amend Regulation 1506.

IV. Background

Exemption for sales of meals to students. Revenue and Taxation Code section 6363 provides a sales and use tax exemption for meals served or furnished to students of public or private schools, school districts, or student organizations. Regulation 1506, subdivision (h) currently explains that summer camps qualify as schools or educational institutions if the camps "conduct regularly scheduled classes, with required attendance, in charge of qualified instructors."

On February 24, 2010, the Board of Equalization (Board) heard a sales and use tax appeals case regarding the sales of meals at a Young Life camp facility. At issue was whether sales of meals to campers qualified for exemption from tax as student meals under the provisions of Regulation 1506, subdivision (h). The petitioner explained that while classes are not held in a classroom, the camp conducts an educational program with scheduled activities including religious, leadership, and life skills training. Campers are required to attend scheduled activities taught by qualified instructors. Accordingly, the petitioner argued that the camp met the requirements for exemption as provided in Regulation 1506, subdivision (h). The Board agreed with the petitioner and instructed staff to amend Regulation 1506 to clarify the regulation.

Interested parties and staff met on May 19, 2010, to discuss staff's proposed revisions to Regulation 1506. The Business Taxes Committee is scheduled to discuss this matter on September 14, 2010.

SECOND DISCUSSION PAPER
Proposed revisions to Regulation 1506, Miscellaneous Service
Enterprises, regarding sales of meals at summer camps

V. Discussion

What is a “camp”?

Staff believes the provisions of Regulation 1506 are intended for organized camps with facilities similar to those operated by the Young Life organization. That is, the term “summer camps” refers to camp facilities that run traditional camp programs, and not to resorts, conference centers, or other hotel and lodging establishments. Staff further believes that Regulation 1506 was not intended to apply to businesses that provide all inclusive camp packages outside a traditional summer camp facility. For example, an outdoor adventure company that offers rock climbing camps at various state parks for an all inclusive price (lodging, meals, climbing gear, and instruction) is not a traditional summer camp facility.

Based on discussions with interested parties, traditional camps such as those operated by the YMCA, YWCA, Girl Scouts, and Boy Scouts meet the definition of an “organized camp” as provided in section 18897 of the California Health and Safety Code.¹ Camps accredited by the American Camp Association also meet this definition. Furthermore, the statutory definition of an “organized camp” expressly excludes a wide variety of businesses that are not traditional camps, such as tourist camps, trailer parks, resorts, hunting camps, and childcare institutions. Therefore, to focus upon the intended traditional camps, staff proposes amending Regulation 1506 to clarify that, for purposes of the exemption, a camp must be an “organized camp” as defined in California Health and Safety Code section 18897 (see Exhibits 1 and 2).

At the first meeting with interested parties, staff discussed the provisions of subdivision (a) of section 18897, which provides:

“Organized camp” means a site with program and facilities established for the primary purposes of providing an outdoor group living experience with social, spiritual, educational, or recreational objectives, for five days or more during one or more seasons of the year.

Staff interprets this provision to mean that a camp facility meeting the requirement for one camp session continues to meet the requirement even if it also conducts some shorter camp sessions. That is, staff would evaluate the camp year, rather than any one camp session. For example, a camp offers 5-day outdoor education camps for 6th graders and also provides 3-day outdoor education camps for 4th graders. Because the camp provides 5-day requirement with the 6th grade camp sessions, they are still considered an “organized camp” during the 3-day camp sessions.

¹ Section 18897 is further clarified by the California Department of Health Services in California Code of Regulations, title 17, sections 30700 – 30753.

SECOND DISCUSSION PAPER
Proposed revisions to Regulation 1506, Miscellaneous Service
Enterprises, regarding sales of meals at summer camps

The name of Regulation 1506, subdivision (h) “summer camps” was also discussed at the meeting with interested parties. Many camps operate year-round offering sessions to campers whose schools are not based on a traditional calendar. Some offer camps for students during the school year, such as an outdoor science camp. Therefore, to update the subdivision’s name to reflect the operations of the various camps, staff proposes changing the name from “summer camps” to “organized camps.”

Requirements for camp classes

Regulation 1506, subdivision (h) currently provides three requirements that camps must meet in order for the camp to be considered a school or educational institution under the regulation. The camp must conduct: (1) regularly scheduled classes, (2) with required attendance, (3) in charge of qualified instructors.

“Regularly scheduled classes.” Staff believes that a camp session must promote an educational program, but recognizes that camps typically provide this education outside a traditional classroom setting. For example, ropes course activities teach problem-solving, communication, and leadership skills. Ecology, conservation, and geology can all be taught during a guided nature hike. In addition, classes in spiritual training or physical education, including but not limited to archery, marksmanship, swimming, boating, and arts and crafts, are also educational. Therefore, for purposes of this regulation, all of these types of classes will meet the first requirement of the Regulation 1506, subdivision (h) test if they are regularly scheduled.

Further, some camps regularly schedule a variety of classes and allow campers to select the activity they wish to participate in; these types of regularly scheduled classes will also satisfy the first requirement of the test. For example, a camp may allow a camper working on a merit badge for archery to choose to attend classes on range safety and archery practice, and allow a camper working on a hiking badge to attend classes in first aid and wilderness survival.

In general, most youth summer camps include activities that qualify as regularly scheduled classes. Conversely, camps or retreats where recreation and fellowship are the primary goals generally do not include activities that meet the “regularly scheduled classes” requirement. The focus of the camp session is rest and relaxation. For example, a “fishing retreat” or “summer concert weekend” where activities may be offered daily, but the focus of the event is recreation, does not conduct regularly scheduled classes.

“Required attendance.” If attendance at classes is not required, a camp’s sales of meals are subject to tax. Again, activities at most youth summer camps meet this requirement as campers are required to attend scheduled activities that qualify as classes. Camps should document that attendance is required in their camp brochures, registration materials, website information, camper rule agreements, and other materials in order to substantiate that they qualify for the exemption.

SECOND DISCUSSION PAPER
Proposed revisions to Regulation 1506, Miscellaneous Service
Enterprises, regarding sales of meals at summer camps

Other types of camp sessions, such as adult retreats and family camps, would not meet this requirement if attendance is optional. For example, a camp would not satisfy the “required attendance” requirement if it offered a variety of classes and recreational activities and required participants to attend a camp orientation on the first day, but otherwise allowed campers to choose to attend as many of the scheduled activities as they want, or choose not to attend any activities during the rest of the camp session.

“In charge of qualified instructors.” Staff believes that an instructor is “qualified” when the instructor has the formal training or sufficient experience to adequately prepare the instructor to teach his or her subject. Therefore, the level of training and experience needed to be a qualified instructor depends on the class being taught. For example, an instructor may need certification by the American Heart Association or Red Cross to be “qualified” to teach CPR and general first aid. A kayaking instructor may have years of experience in kayaking and water safety training.

Staff recognizes that organized camps interview, hire, and train staff to lead camp classes and activities. Often senior staff members guide and supervise less experienced instructors in order to ensure that the newer instructors are “qualified.” In general, if the camp determines that the instructor is qualified to lead a class, then the camp will have met this requirement of the regulation. However, again camps should maintain records that show their instructors’ level of training and/or experience related to the area they teach to substantiate that they qualify for the exemption.

Meals given away at camps

Camps are consumers of meals and nonfood products that are provided free of charge. Therefore, a camp will have no tax liability in regard to food products that are consumed in providing free meals². However, if a camp gives away nonfood items (such as carbonated beverages) that the camp purchased for resale without payment of tax, the camp must pay use tax based on the cost of those items. If a camp does consume taxable nonfood items that were purchased without payment of tax, the camp should track the cost of the consumed items on an actual basis or establish a method for making a reasonable estimate and retain the estimate calculations in its records.

Meals sold to non-students

While sales of meals to campers that qualify as students under Regulation 1506, subdivision (h) are exempt under section 6363, sales of meals to non-students (e.g., instructors, staff, and guests) are taxable. With regard to sales of meals to employees, Regulation 1603, *Taxable Sales of Food Products*, provides in subdivision (k) that tax applies only if a specific charge is made for meals. A specific charge is made if the

² Sales and purchases of food products are exempt from sales and use tax as provided in Regulation 1602, *Food Products*.

SECOND DISCUSSION PAPER
Proposed revisions to Regulation 1506, Miscellaneous Service
Enterprises, regarding sales of meals at summer camps

employee pays cash for meals consumed, the value of the meals is deducted from the employee's paycheck, the employee receives meals in lieu of cash to bring compensation up to legal minimum wage, or the employee has the option to receive cash for meals not consumed. In the absence of any of the conditions above, there is no specific charge when a value is placed on the meals as a means for reporting the fair market value of employees' meals pursuant to state and federal laws or regulations. (See Exhibit 3 for the full provisions of Regulation 1603(k).)

Annotation³ 550.1135 explains the application of tax in a situation similar to camps:

550.1135 California Conservation Corps. CCC pays each corpsmember \$580 a month and deducts \$145 for room and board. This constitutes a specific charge as described in Regulation 1603(k)(2)(B). Although corpsmembers are required to attend specified evening workshops and classes, most of the classes are taught by other than CCC staff and at facilities other than those of CCC. The CCC is not a school but an employer providing opportunities for employees to further their education. Since a specific charge is made for meals, the portion of the \$145 allocable to meals is a taxable sale. 7/15/86.

Thus, if an organized camp deducts an amount for room and board from their employees' wages, the camp will have made a specific charge. The camp would need to establish a reasonable method for estimating the portion of the charge for room and board that represents the sale price of taxable meals and report tax on those sales. Camps should retain these estimate calculations in their records.

Information Provided to Camps

Staff is aware that some camps may not know that they need to hold a seller's permit and report tax on their sales of meals to non-students and other sales of tangible personal property such as photos, videos, t-shirts, and souvenir items. As part of the implementation of any approved revisions to Regulation 1506, staff will work with interested parties to provide camps with information about their reporting responsibilities.

Segregating Taxable and Non-Taxable Sales

Finally, staff believes that the second to last sentence in Regulation 1506, subdivision (h) is awkwardly written. Therefore, staff recommends a few grammatical changes to the sentence to make it read more clearly without changing its meaning or effect.

³ Annotations, which are published in the Business Taxes Law Guide, are summaries of conclusions reached by staff counsel as applied to specific factual situations. They are a research tool and intended to provide guidance regarding the interpretation of Board statutes and regulations. Annotations are not regulations and do not have the force or effect of law.

SECOND DISCUSSION PAPER
Proposed revisions to Regulation 1506, Miscellaneous Service
Enterprises, regarding sales of meals at summer camps

VI. Summary

Staff proposes amendments to subdivision (h) of Regulation 1506 to clarify the application of tax to meals sold at organized camps. Staff welcomes any comments, suggestions, and input from interested parties regarding this issue.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 06/25/2010

(NOTE: Only the relevant subdivision of the regulation is contained in this Exhibit. Other subdivisions are not being amended.)

Regulation 1506. Miscellaneous Service Enterprises.

(h) SUMMER ORGANIZED CAMPS.

(1) CAMPS IN GENERAL. The tax applies to gross receipts from the sale of meals or other tangible personal property at ~~summer~~ camps, whether operated by municipal or private corporations, or other parties.

(2) CAMPS QUALIFYING AS SCHOOLS OR EDUCATIONAL INSTITUTIONS. When a camp qualifies as a school or educational institution, tax, with respect to meals, applies in the same manner as to schools and educational institutions. If a camp meets all of the following conditions, the camp will qualify as a school or educational facility for purposes of this regulation:

(A) The camp conducts regularly scheduled classes.

(B) Students are required to attend the classes.

(C) Qualified instructors are in charge of the classes, and

(D) The camp is an "organized camp" as defined in California Health and Safety Code section 18897

~~To qualify as a school or educational institution for purposes of this regulation, the camp must conduct regularly scheduled classes, with required attendance, in charge of qualified instructors.~~

An example of a camp that qualifies as a school or education institution includes, but is not limited to the following: A camp offers a session where campers have a schedule of daily activities they are required to attend. These activities include team-building exercises, guided nature hikes, and wilderness survival techniques. The activities are led by staff that the camp determined to have sufficient training and experience to lead the activities.

An example of a camp that does not qualify as a school or educational institution includes, but is not limited to the following: A camp offers a session that includes activities that are regularly scheduled. Participants are required to attend a camp orientation on the first day, but during the rest of the camp they can attend as many of the scheduled activities as they want, or they can elect to attend no activities.

If a single charge is made for all of the privileges extended by the camp, a segregation must be made ~~and the tax returned~~ on that portion of the total charge representing taxable receipts from the sale of meals or other tangible personal property. In the absence of such a segregation, the taxable receipts from the sale of meals or other tangible personal property shall be determined by the board based on information available to it.

California Codes
Health and Safety Code

18897. (a) "Organized camp" means a site with program and facilities established for the primary purposes of providing an outdoor group living experience with social, spiritual, educational, or recreational objectives, for five days or more during one or more seasons of the year.

(b) The term "organized camp" does not include a motel, tourist camp, trailer park, resort, hunting camp, auto court, labor camp, penal or correctional camp and does not include a child care institution or home-finding agency.

(c) The term "organized camp" also does not include any charitable or recreational organization that complies with the rules and regulations for recreational trailer parks.

(k) EMPLOYEES' MEALS.

(1) **IN GENERAL.** Any employer or employee organization that is in the business of selling meals, e.g., a restaurant, hotel, club, or association, must include its receipts from the sales of meals to employees, along with its receipts from sales to other purchasers of meals, in the amount upon which it computes its sales tax liability. An employer or an employee organization selling meals only to employees becomes a retailer of meals and liable for sales tax upon its receipts from sales of meals if it sells meals to an average number of five or more employees during the calendar quarter.

(2) **SPECIFIC CHARGE.** The tax applies only if a specific charge is made to employees for the meals. Tax does not apply to cash paid an employee in lieu of meals. A specific charge is made for meals if:

- (A) Employee pays cash for meals consumed.
- (B) Value of meals is deducted from employee's wages.
- (C) Employee receives meals in lieu of cash to bring compensation up to legal minimum wage.
- (D) Employee has the option to receive cash for meals not consumed.

(3) **NO SPECIFIC CHARGE.** If an employer makes no specific charge for meals consumed by employees, the employer is the consumer of the food products and the non-food products, which are furnished to the employees as a part of the meals. In the absence of any of the conditions under (k)(2) a specific charge is not made if:

- (A) A value is assigned to meals as a means of reporting the fair market value of employees' meals pursuant to state and federal laws or regulations or union contracts.
- (B) Employees who do not consume available meals have no recourse on their employer for additional cash wages.
- (C) Meals are generally available to employees, but the duties of certain employees exclude them from receiving the meals and are paid cash in lieu thereof.

(4) **MEALS CREDITED TOWARD MINIMUM WAGE.** If an employee receives meals in lieu of cash to bring his or her compensation up to the legal minimum wage, the amount by which the minimum wage exceeds the amount otherwise paid to the employee is includable in the employer's taxable gross receipts up to the value of the meals credited toward the minimum wage.

For example, if the minimum rate for an eight-hour day is \$46.00, and the employee received \$43.90 in cash, and a lunch is received which is credited toward the minimum wage in the maximum allowable amount of \$2.10, the employer has received gross receipts in the amount of \$2.10 for the lunch.

(5) **TAX REIMBURSEMENT.** If a separately stated amount for tax reimbursement is not added to the price of meals sold to employees for which a specific charge is made, the specific charge will be regarded as being a tax-included charge for the meals.