

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Petition for Redetermination
Under the Sales and Use Tax Law of :

John Chris Mogannam
SR KH 99-108404-010
89002106580

Appearances:

For Petitioner:	Mr. John Chris Mogannam
For the Sales and Use Tax Department:	Mr. Gary J. Jugum, Assistant Chief Counsel Mr. Warren Astleford, Senior Tax Counsel
For the Appeals Section:	Ms. Susan M. Wengel, Senior Tax Counsel

MEMORANDUM OPINION

This opinion considers the merits of the petition for redetermination under the Sales and Use Tax Law for the period January 1, 1993, through December 31, 1995. Petitioner operated a cafeteria on the premises of a private school, St. Francis High School in Sacramento, California. He operated the cafeteria and paid rent to the school. He used the cooking equipment and serving facilities owned by the school and served lunches to the students in the school's multipurpose room during the lunch hours. The school used the room for other purposes such as sporting events, plays, and other school activities during the remainder of the school day. The only sales in question are the sales in which the students directly paid petitioner for their lunches.

The issue presented in this petition is whether Revenue and Taxation Code section 6363 exempts the sales of meals by petitioner to the students. This statute states, in pertinent part, that there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, meals and food products for human consumption furnished or served to the students of a school by public or private schools.

OPINION

We conclude that petitioner's sales to the students do qualify for exemption under Revenue and Taxation Code section 6363. We also find that the school was in fact furnishing the meals to the students by hiring petitioner to sell the meals to the students at the school's facilities. If not for the permission of the school and the use of the school's facilities, including its fixtures and equipment, the meals could not have been furnished to the students.

Our conclusion was largely based upon the following facts which we determined as necessary for school meals to qualify for the Revenue and Taxation Code section 6363 exemption:

1. The facilities used by the operator to serve the lunches to the students is used by the school for other purposes such as sporting events and other school activities during the remainder of the school day.
2. The fixtures and equipment used by the operator are owned and maintained by the school.
3. The students purchasing the meals cannot distinguish the operator from the employees of the school.

We thus conclude that the petition for redetermination should be granted.

Done at Sacramento, California, this 10th day of August, 2000.

Dean Andal _____, Member

Claude Parrish _____, Member

Marcy Jo Mandel* _____, Member

*For Kathleen Connell, per Government Code section 7.9.