


STATE BOARD OF EQUALIZATION

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November 1, 2005

Ms. R--- A---
 W--- Co.
 XXX --- Road, MS #XXXX
 ---, --- XXXXX

Re: SR --- XX-XXXXXX
 Sales of Soda Fountain Drinks

Dear Ms. A---:

Tax Policy Manager Jeffrey McGuire has forwarded your letter to him dated June 23, 2005, to the Legal Department for an opinion. You indicate that you are asking about the application of sales tax to W---'s sales of soda fountain drinks generally. You also mention that the drinks can now be purchased with federal food stamps. You indicate that there are no facilities for consumption of the drinks at the stores selling them.

We have discussed the application of the sales tax to sales of items for human consumption in previous letters to W---, so, for the sake of brevity, I will not repeat that discussion here. I am, however, enclosing a copy of Regulation 1602, which sets forth the applicable law, for your review and reference. In summary, Revenue and Taxation Code section 6359,¹ interpreted and implemented by Regulation 1602, provides an exemption from sales tax for sales of food sold for human consumption. "Food products" include all fruit juices, vegetable juices, and other beverages but do not include carbonated or effervescent beverages. (Reg. 1602, subd. (a)(2).)

1. Soda Fountain Drinks Generally.

Under the regulation, sales of soft drinks sold at soda fountains are not subject to tax if they are non-carbonated and taxable if they are carbonated.² This distinction applies to semi-frozen fountain drinks, such as "Icees" or "Slurpees," as well. (See, e.g., Annots. 245.1020 (3/12/70) & 245.0580 (3/24/70).)

W--- may collect sales tax reimbursement on its taxable sales of soda fountain drinks. (Civ. Code, § 1656.1). You do not give details on how the drinks are sold. Usually, a store just adds sales tax reimbursement to the price of an item. It may be, however, that instead of selling a specific drink to the customer, the store sells all the drinks at the same price, giving the customer a

¹ All statutory citations are, unless otherwise stated, to the Revenue and Taxation Code.

² The fact that customers may choose to consume the drinks while shopping in the store does not make the sales of the drinks taxable as being sold for consumption at "facilities of the retailer" under Regulation 1603, subd. (f).

cup so that the customer can choose the drink at a machine that dispenses non-carbonated and carbonated beverages. Since the store does not know at the time of sale what drink the customer will choose, the store may not have an economic way to segregate the sales of non-carbonated drinks from sales of carbonated drinks. If that is the case, W--- may prefer to sell the drinks on a tax-included-when-applicable basis so that W--- would avoid collecting sales tax reimbursement on sales of non-carbonated beverages that are not subject to tax. To do this, W--- should post near the relevant cash registers and drink dispensers signs stating as follows: "All prices of taxable fountain drinks include sales tax reimbursement computed to the nearest mill." (See Reg. 1700, subd. (a) [discussing collection of sales tax reimbursement and explaining the requirements for making sales on a tax-included basis]; see also, e.g., Annot. 590.0150 (9/9/93) [illustrating a similar problem with vending machines on school campuses].)

2. Food Stamps.

You mentioned that soft drinks can be purchased with food stamps. Regarding sales of food products to customers using food stamps, subdivision (c) of Regulation 1602.5, which interprets and implements section 6373, provides, in part, as follows:

"Tangible personal property eligible to be purchased with federal food stamps and so purchased is exempt from the tax. Grocers who receive gross receipts in the form of federal food stamp coupons in payment for such tangible personal property which normally is subject to the tax, e.g., nonalcoholic carbonated beverages, may deduct on each sales tax return an amount equal to two percent (2%) of the total amount of food stamps redeemed during the period for which the return is filed. . . . This deduction may be taken in lieu of accounting separately for such sales."

Thus, sales of soda fountain drinks that would ordinarily be taxable are not subject to tax to the extent the customer pays for the drinks with food stamps. For your information, I have included a copy of Board of Equalization Tax Tip Pamphlet No. 31, "Tax Tips for Grocery Stores," which contains a discussion on accounting for sales the gross receipts from which are received in the form of food stamps.

Sincerely,

John L. Waid
Senior Tax Counsel

JLW:ef

Enclosures: Regulation 1602
Tax Tip Pamphlet No. 31, "Tax Tips for Grocery Stores"

cc: Out-of-State District Administrator (OH)