

**M e m o r a n d u m****245.0035**

To: Mr. Glenn Bystrom  
Principal Tax Auditor

Date: June 3, 1992

From: John L. Waid  
Tax Counsel

Subject: Classification of Asian Specialty Foods

Assistant Chief Counsel Gary J. Jugum has asked me to respond to your memorandum to him dated March 26, 1991, on the above subject, a copy of which is attached hereto. You asked for the Legal Division to reconsider our opinion, as expressed in my letter to [X] that manju did not qualify as a snack cake or pie within the meaning of Section 6359(c) (2), interpreted and implemented by Emergency Regulation 1602(a)(4). In your letter you supplied a fuller description of manju than [X] had given me. You also asked about the status of mochi, yokan, and monaka, describing all three products. You also sent a couple of samples of, I think, mochi. The product appears to be a sponge-cake-like circular base which is folded up around a sweet bean paste ball and then steamed. One had turned into a science project by the time I got around to writing this, but the other had a very sweet, almost liqueur-like flavor.

**OPINION**

You are of the opinion that these items should be subject to tax because they are eaten as snacks or desserts. Unfortunately, the above statute does not exclude from the definition of food products "snacks," but rather "snack foods," which are defined as food products fitting into one of ten categories. In order for sales of a particular item to be subject to tax, it must fit within one of these categories. The categories that appear to apply to these items are confection, cookies and snack cakes and pies. Emergency Regulation 1602(a)(4)(D) defines "snack cakes and pies" as "cakes or pies which are baked or fried in individual serving sizes or cut and pre-wrapped or pre-packaged for subsequent sale in individual serving sizes, whether sold individually or packaged together ...." Sub-section (a)(4)(A)(I) provides that "snack foods" do not include doughnuts, breads pastry, and other bakery products (other than cookies, crackers, snack cakes, and pies). Snack foods are sold in a condition suitable for immediate consumption without further processing such as heating, cooking, or thawing. (Emer. Reg. 1602(a)(4)(B).)

The classifications set forth in the statute have one serious drawback - they are based on anglo-style food items. When the question is ethnic foods, these categories may not fit exactly. Therefore, it behooves us to look at the way in which the particular item is regarded in the community from which it originates. If it is used as a "snack" as that word is defined in Regulation 1602(a)(4)(B), then sales of the item should be considered as taxable unless it cannot be seriously considered as like a "cookie, snack cake, etc." As I understand, the Japanese-

Americans on the staff of the Hollywood District, which raised this question, believe these items should be taxed. You indicate that Mochi is classified by the vendors as a Japanese snack cake. The Japanese-Americans on the staff agree the dough is folded around the bean paste interior. You also indicate that it is sold in individual pre-wrapped servings. Even though the dough is steamed rather than baked, this item appears to be most like a filled cake. Especially since the vendor considers it a snack cake, this item is a "snack cake" within the meaning of the above regulation.

Yokan appears to be made of the bean paste only. The absence of dough would take this item out of the "cake" category. However, it appears that it may be classified as a candy. Yokan is made by steaming beans until they are reduced to a gelatinous mass, which is sweetened by the addition of sugar. The sample I obtained and tasted looked like a lump of hard jello. Although prepared in long logs, they are sliced into individual servings for sale. My research indicates that yokan is used as a dessert or served with tea. It appears that these items are most similar to glazed fruits which we have previously determined are candy. Therefore, we conclude that yokan is a candy the sales of which are subject to tax.

Manju is a little more difficult due to the various forms in which it is made. The samples I obtained were like a stocky bun. The dough is apparently made of rice flour, formed around a sweet bean paste center, and steamed. Again, my information is that these items are used as desserts and tea cakes. As a result, and based on the fuller information you have provided, we conclude that manju and monaka are snack cakes within the meaning of Regulation 1602(a)(4)(D). The fact that some forms of manju are stored in the freezer does not affect the overall classification.

JLW:es

Attach.