

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

January 15, 1987

Ms. J--- S---  
D--- L--- Incorporated  
XX --- ---, Suite XXXX  
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX

Dear Ms. S---:

Your letter dated December 22, 1986 has been referred to me for response. You ask for confirmation that the service you perform is exempt from sales tax, but you do not explain the service you believe to be exempt. My understanding of your situation as set forth below is therefore based on telephone conversations with Mrs. Evans of our --- --- district office, where you applied for your seller's permit.

You own vending machines which, for 25¢, dispense a ticket having six randomly selected numbers. Your customers can then use the numbers to play in the Lottery's Lotto game. We understand that in addition to, or instead of, operating these vending machines yourself, you may lease them to others. I first discuss the taxation of you leasing of the machines and then the taxation of the sale of tickets through the machines.

Generally, your lease of machines is a continuing purchase and sale, and the lease payments to you are subject to use tax. (Revenue and Taxation Code §§ 6006(g), 6006.1, 6010(e), 6010.1, Sales and Use Tax regulation 1660(c)(1).) However, you can avoid the requirement of collecting use tax on rentals paid by making one of two elections. You may pay your vendor sales tax reimbursement or you may timely pay use tax measured by your purchase price with your return for the period during which the machine is first placed in rental service (Regulation 1660(c)(2).)

If you will be collecting the use tax from your leases and will make no use of the machines other than leasing them, you will be purchasing them for resale. (Rev. & Tax. Code §§6006(g), 6006.1, 6007.) This means that you may purchase the machines without paying sales tax reimbursement to your vendor by issuing your vendor a resale certificate. This is explained in Sales and Use Tax Regulation 1668, a copy of which is enclosed.

The discussion below assumes that you will be operating the machines yourself. If, instead, you lease them, the rules set forth below would apply equally to your leases.

The money you receive from the sale of tickets through the vending machines is subject to sales tax because the tickets are tangible personal property being sold at retail. (Rev. & Tax. Code §§ 6007, 6015, 6051.) Sales and Use Tax Regulation 1574, a copy of which is enclosed, explains the proper manner in which you must report your sales tax liability on sales through vending machines. One requirement is that a statement be affixed on the machines stating the name, address, and seller's permit number of the operator of each machine. (Regulation 1574(a)(1).)

Please note that your sales of tickets will be regarded as having been made on a tax-included basis only if a statement in substantially the following form is affixed to the machine: "All prices of taxable items include sales tax reimbursement computed to the nearest mill." (Regulation 1574(a)(1).) So, for example, if a machine on which the foregoing statement is affixed takes in \$100.00 in receipts, your sales tax liability at the rate of 6.5% would be \$6.10. If the statement is not affixed on the machine, your sales tax liability would be \$6.50. Since you will be purchasing the tickets to be dispensed for resale, you may purchase those tickets without paying sales tax reimbursement to your vendor by issuing a resale certificate. (Regulation 1668.)

A copy of Regulation 1660 is enclosed in addition to copies of regulations 1574 and 1668. If you have further questions, feel free to write us again.

Sincerely,

David H. Levine  
Tax Counsel

DHL:ss  
Encl.