

M e m o r a n d u m**245.0590**

To: Mr. Glenn A. Bystrom, Deputy Director
Sales and Use Tax Department

Date: June 19, 1995

From: David H. Levine
Supervising Staff Counsel

Subject: Ice Annotation

This is in response to your memorandum dated April 11, 1995 regarding a recent decision of the Board. In that case, the Board regarded a person who sold ice to hot dog vendors (who used carts rented from the taxpayer) as having sold 50 percent of the ice for resale in soft drinks and as having sold 50 percent at retail for use in keeping food and soft drinks cool while awaiting sale. We agreed that an annotation on the subject was appropriate. Therefore, by copy of this memorandum, I am asking Mr. Nunes to annotate the following:

Sales of Ice. A taxpayer rents hot dog carts to independent street vendors, and also sells them ice without taking any resale certificates. The street vendors use some of the ice to keep their products cool or fresh, and resell some of the ice in or with soft drinks. In lieu of clear evidence otherwise, the Board will regard 50 percent of the sales of ice as nontaxable sales to the vendors for resale in or with soft drinks and 50 percent of the sales of ice as taxable retail sales for use in the vendor's business. The exemption provided by section 6359.7 does not apply to these taxable sales since that exemption applies only with respect to ice used in packing or shipping food products for human consumption by carrier and not for use of ice by street vendors.

DHL:cl

cc: Mr. William D. Dunn
Mr. Dennis fox
Mr. Robert Nunes
Mr. James Stillwell