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September 23, 1993

Mr. H--- C--- B---
XXXX --- --- Court
---, CA XXXXX

Re: Application of Sales Tax
Snacks Sold Through Honor Vending
#SR --- XX-XXXXXX

Dear Mr. B---:

We are writing in response to your undated letter requesting an opinion about the application of sales tax to sales of snacks you sell through the honor system. In your letter you state:

I was advised when I first started my business that snacks (candy, cookies, crackers, chips etc.) sold from a tray on the honor system (no machine of any kind) were not taxable, if not sold in a lunchroom or other place where items are held for sale that are taxable.

Our response is based on the assumption that by "honor system" you mean a system whereby customers take snacks from a box or tray and pay for the snacks by depositing money in a container the seller leaves with the box or tray. The customers are "on their honor" because there is no clerk to take their money.

Your question is whether snacks sold through honor boxes or trays are taxable, depending on where the sale is made.

1. FOOD PRODUCTS - SNACK FOODS

In general, tax does not apply to sales of food products for human consumption. (Sales and Use Tax Regulation 1602.) However, for the period of July 15, 1991 through November 30, 1992, candy or confectionery, nonmedicated chewing gum, and other snack foods were not considered food products for human consumption, with the result that the sales of such products were subject to tax. The taxation of sales of snack food was reversed by the passage of

Proposition 163 in the November 3, 1992 general election and effective December 1, 1992 snack foods are again considered food products. Consequently, if you sold any snacks from July 15, 1991 through November 30, 1992 (the brief period when sales of snack foods were excluded from the food products category and treated as taxable), these items are taxable whether or not honor boxes are considered vending machines for sales tax purposes.

2. HONOR SYSTEM

Subdivision (d)(5) of Revenue and Taxation Code section 6359 provides that none of the food products exemptions otherwise provided in that section apply when the food products are sold through a vending machine. Thus, sales of food products through vending machines are subject to sales tax.

Admittedly, vending machines and snack trays share common characteristics. Both are unattended, and in both cases the transaction can be completed when the customer places money in a slot or other opening. Nevertheless, words in a statute are to be given their ordinary and plain meaning unless the context or apparent scope shows that the words are used in a technical or in some arbitrary sense. (People v. Eddy (1872) 43 Cal. 331, 336-337.) The dictionary (Webster's New World Dict. (3d College ed. 1991) p. 1480) defines a vending machine as "a coin operated machine for selling certain kinds of articles, refreshments, etc.". (Emphasis added.) Therefore, the plain meaning of "vending machine" does not include trays or non-mechanical open boxes. Consequently, we consider your snack tray as similar to snack bars or snack carts which also happen to be unattended. This means that your sales of snacks on the honor system are not considered taxable sales of food products through vending machines within the meaning of Revenue and Taxation Code section 6359(d)(5).

3. FOOD FOR CONSUMPTION AT FACILITIES PROVIDED BY THE RETAILER

Sales of food near lunch rooms, break rooms, or other food service facilities are another exception to the general rule that sales of food products are exempt. (Rev. and Tax. Code § 6359(d)(2).) Sales and Use Tax Regulation 1603(f), which explains this statute, provides:

"Tax applies to sales of sandwiches, ice cream, and other foods sold in a form for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

A passenger's seat aboard a train, or a spectator's seat at a game, show, or similar event is not a "chair" within the meaning of this regulation. Accordingly, except as otherwise provided in (c), (d), and (e) above, tax does not apply to the sale of cold sandwiches, ice cream, or any other food products sold by vendors passing among the passengers or spectators where the food products are not `for

consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the retailer."

Accordingly, you were correctly advised that snacks sold through an honor tray may be taxable, depending on where the sales take place. Under Regulation 1603(f), your sales of snacks are taxable when sold at or near a lunchroom, break room, or other facility which provides tableware or provides tables, chairs, dishes and it is contemplated that the food sold through the snack tray will normally be consumed at such facilities.

The fact that snacks are sold at a place that makes taxable sales of property other than food products has no bearing on the application of tax. For example, sales of snacks made at a hardware store are not ordinarily subject to tax. What is important is whether the snacks are sold at a location described in Regulation 1603(f).

Again, you should be aware that none of the snacks sold during the period of July 15, 1991 through November 30, 1992 were considered food products for human consumption. Therefore, during that time period your sales of snacks were subject to sales tax regardless of where or how the snacks were sold.

If you have further questions, feel free to write again.

Sincerely,

Gerald Morrow
Staff Counsel

GM/md

Enclosures

cc: Sacramento - District Administrator

Mr. Timothy Raboy
Return Review Section (MIC:35)