

M e m o r a n d u m**195.0706**

To : Mr. J. W. Cornelius, Supervisor
Audit Evaluation and Planning - MIC: 40

Date: March 26, 1996

From : Sophia H. Chung
Staff Counsel

Subject : S--- P---

Your memorandum dated February 8, 1996, to Mr. Gary J. Jugum, Acting Chief Counsel, has been referred to me for response. You request a legal opinion regarding the application of tax to the sale of certain P--- materials to S--- P---. You provide the following factual background:

“S--- P--- packages lottery tickets for their customer, S--- G---. S--- G--- prints lottery tickets for sale to several states, including California. The packaged lottery tickets are then returned to S--- G--- who ships the packaged tickets to their customers.”

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless the sale is exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Tax does not apply to sales of nonreturnable containers sold without the contents to persons who place tangible personal property in the containers for subsequent sale, regardless of whether such persons are the owners of the tangible personal property placed in the containers. (BTLG Annots. 195.0060 (9/13/53, 8/1/63); 195.0330 (4/19/89); 195.1260 (4/1/53).) Accordingly, assuming that the packaging materials purchased by S--- P--- are nonreturnable containers, the sale of such nonreturnable containers to S--- P--- who places lottery tickets in the containers for subsequent sale by S--- G--- is not subject to tax.

As you have noted, Regulation 1589 is currently in the process of being amended to provide that tax does not apply to sales of nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale. Regulation 1630 is also in the process of being amended to provide that tax does not apply to sales of nonreturnable containers sold without the contents to packers who place food products for human consumption in the containers for subsequent sale. The proposed amendments to Regulations 1589 and 1630 are consistent with the interpretations made by this agency in certain specific transactions identified previously where it was determined that tax does not apply to sales of nonreturnable containers to persons who place tangible personal property in the containers for subsequent sale. These proposed amendments are intended to clarify the application of tax and are not intended to reverse any interpretations previously made by this agency. Therefore, although the proposed amendments specifically address persons or packers who place food products, there is no distinction as to the application of tax between sales of nonreturnable containers to persons or packers who place food products for human consumption in containers for subsequent sale from sales of nonreturnable containers to persons or packers who place other tangible personal property in containers for subsequent sale.

If you have any further questions, please contact me at (916) 324-2614.

SHC:rz

cc: Mr. Gary J. Jugum
Mr. Ronald L. Dick
Mr. David H. Levine