



STATE BOARD OF EQUALIZATION

March 24, 1970

Dear Mr. [X]:

Mr. H. A. Dickson has asked me to reply to your letter of March 18, 1970 concerning the application of tax to "ICEE" flavored frozen product.

We appreciate your sending us the additional information to help clarify what you call a somewhat confusing situation. However, it appears clear to me that "ICEE" is a carbonated beverage and is therefore subject to tax.

As you know, carbonated beverages are specifically excluded from the food products exemption by Revenue and Taxation Code Section 6359 and by Ruling 52(a)(2).

The advertising brochure prepared by [M] for distribution to prospective dealers states that ICEE is "the new way to serve carbonated drinks." It goes on to say:

"Carbonation is locked in as drink freezes... released as it melts. ICEE CAN'T GO FLAT ...is sparkly from start to finish. ICEE is always PERFECTLY MIXED. Syrup, water and CO2 are in constant proportion. Then, freezing in cup, it becomes tastier and tangier than the same flavor when simply poured over ice."

From this I can only conclude that ICEE is a carbonated beverage served in a new form. While the CO2 contributes to the freezing process, it is also an essential part of the beverage itself.

Very truly yours,

Lawrence A. Augusta
Tax Counsel

LAA:ph [lb]