



STATE BOARD OF EQUALIZATION

(916) 445-6493

October 19, 1983

Your letter of September 9, 1983 to REDACTED TEXT, Assistant Chief Counsel, has been referred to be for reply. You request our opinion as to the correct application of tax to the sale of meals and food products through vending machines to students of the REDACTED TEXT.

We understand that the REDACTED TEXT sells meals and food products to their students through vending machines which are owned by the REDACTED TEXT. After reviewing Assembly Bill 223 (1983), Chapter 323, you have concluded that the sales of these items through REDACTED TEXT owned vending machines are exempt from sales and use tax. It is your opinion that the general exemption for school meals and food products found in Revenue and Taxation Code Section 6363 continues to apply to the REDACTED TEXT sale of meals and food products through its vending machines. You note that many of these vending machines, although located on REDACTED TEXT campuses, can be used by non-students as well as used by REDACTED TEXT students. You propose that the representatives of the affected campuses and the Board find a mutually acceptable methodology for determining the relative proportion of student and non-student vending machine sales, possibly one based on statistical sampling method.

As you are aware, effective August 1, 1983, AB 223 made several changes to the Revenue and Taxation Code with respect to sales of tangible personal property through vending machines. Section 6359 was amended to provide that the exemption for sale of food products does not apply when the food products are sold through a vending machine (Section 6359(f)). Also, Sections 6359.2 and 6359.4 were repealed and Section 6359.45 was adopted. Section 6359.2 provided that 33 percent of the gross receipts of any retailer from the sale of cold food products through a vending machine was subject to tax. Section 6359.4 provided that sellers of tangible personal property sold through vending machines for 15 cents or less were considered consumers rather than retailers of such items. Section 6359.45 was added to provide that a nonprofit, charitable, or education organization is a consumer of, and not a retailer, of tangible personal property sold through a vending machine for 15 cents or less.

Therefore, in regards to the sale of food products through vending machines, effective August 1, 1983, the total gross receipts from the sale of hot or cold food products are subject to tax regardless of the price of the food product, unless otherwise exempted under sales and use tax law. Section 6359.45 provides a limited exemption for nonprofit, charitable, and education organizations selling items through vending machines for 15 cents or less. As you correctly point out, Section 6363 provides another exemption which applies to the University's food vending machine operations.

Section 6363 exempts from tax the gross receipts from the sale or use of meals and food products for human consumption furnished or served to the students of a school by public or private

schools, school districts, and student organizations. However, in regards to the sale of cold food products through a vending machine by schools to their students prior to August 1, 1983, 33 percent of the gross receipts from such sales was subject to tax. (Sales and Use Tax Regulation 1574 (a)(3)(A) and 1603 (i)(2)(A)). Because of the repeal of Section 6359.2 by AB 223, the Board has amended Regulation 1574 and 1603 by deleting from these regulations the provisions requiring a 33 percent sales tax on a school's vending machine sales of cold food products to its students. Therefore, in our opinion, effective August 1, 1983, tax does not apply to retail sales of food products or meals, whether served hot or cold, through a vending machine or otherwise by the REDACTED TEXT to its students. This exemption, however, does not apply to such sales of food products and meals to non-students.

Except to the extent the REDACTED TEXT is considered a consumer of tangible personal property sold for 15 cents or less pursuant to Section 6359.45, the gross receipts from the sale of hot or cold food products and meals through a vending machine to non-students is subject to tax. In those situations where sales of food products and meals are made through REDACTED TEXT owned vending machines to both students and non-students, a reasonable allocation between exempt and non-exempt sales can be made. We are advised by REDACTED TEXT, Principal Tax Auditor, that in such cases the REDACTED TEXT can establish a representative test of the vending machine sales occurring on the affected campuses. However, before implementation of such a test, he suggests that you submit the proposed testing procedure to him for review so that he can determine its adequacy and advise our district offices serving the affected REDACTED TEXT campuses. You can send this information to:

REDACTED TEXT Principal Tax Auditor
California State Board of Equalization
P.O. Box 1799
Sacramento, CA 95808

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba