



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

(916) 322-3684

February 24, 1986

Dear REDACTED TEXT,

This is in reply to your October 18, 1985 letter requesting an opinion concerning several aspects of Sales and Use Tax Regulation 1574 (Vending Machine Operators) and Revenue and Taxation Code section 6359.45(b) (...photocopy machine in library). The following are our individual responses to each of your inquiries.

Your first inquiry concerns Regulation 1574(c)(2) (Operators as Consumers). You state:

“Regulation 1574(c)(2)(A) states that we are the consumers pursuant to fixed-term of fixed-price contracts entered into prior to July 21, 1983. The regulation further gives a definition of fixed term in a subsequent paragraph. This definition, in part, states ‘...for a stated period of time, exclusive of any renewal periods other than the term in existence as of July 21, 1983’.

“Our contract contains, in part, the following clauses:

- a. ‘...may be cancelled after ----- months from commencement date upon one months notice in writing to REDACTED TEXT.
- b. ‘...is automatically extended for successive 12 month period to completion of this contract’. (Note: the word ‘period’ is singular, not plural).”

“Our question is twofold:

- a. What is meant by your definition of: “exclusive of any renewal periods other than the term in existence...”?

Example: 5 year contract and automatic 2 year renewal vs 5 year contract with option to renew for 2 years.

- b. Within your definition of term, how would you classify the successive 12 month period of our contract?”

Assembly Bill 223, Statutes of 1983, Chapter 323, made substantial changes to the Revenue and Taxation Code with respect to sales of tangible personal property through vending machines. Effective August 1, 1983, pursuant to the provisions of AB 223, tax applied to the gross receipts from retail sales of tangible personal property through vending machines, regardless of the price charged for such items.

However, the Legislature did not want to provide for those who entered into fixed-price and fixed-term contracts before the effective date of AB 223, and it made such provisions in Section 36.3 and 36.5 of Assembly Bill 399 (Stats. 1983, Ch. 1102). Those provisions are incorporated in Sales and Use Tax Regulation 1574(c) as part of the amendments which occurred to this regulation at the time the aforementioned statutes were changed.

Under these provisions, a vending machine operator can still report and pay sales taxes after August 1, 1983 to the same extent and under the same conditions as were required under Sales and Use Tax Law on July 20, 1983, if certain provisions, which are also contained in Regulation 1574(c), are met.

Under Sales and Use Tax Regulation 1574(c)(2) operators of vending machines dispensing tangible personal property for 15¢ or less are consumers of such property if the property is sold:

- “(A) Pursuant to a fixed-term or fixed-price contract entered into prior to July 21, 1983, or
- (B) Pursuant to a fixed-term or fixed-price contract entered into pursuant to a firm bid submitted prior to July 21, 1983, or
- (C) Pursuant to an interim operation agreement covering the period prior to an award of a contract for which a firm bid was submitted prior to July 21, 1983, and
- (D) The tangible personal (property) sold through the vending machine is sold during the remaining term of the contract covering the machine and is sold at the same price charged for the property on July 21, 1983.”

“Fixed term contract means a contract authorizing the sale of tangible personal property through a vending machine at a stated location or locations for a stated period of time, exclusive of any renewal periods other than the term n existence as of July 21, 1983.

“Fixed-price contract means a contract providing for the receipts by the vending machine operator of a fixed percentage of the gross receipts from a vending machine at a stated location or locations during the term of the contract.”
(Emphasis added)

We are of the opinion that the effect of the phrase “...exclusive of any renewal periods other than the term in existence...” means that the definitions of a “fixed term contract” does not include any renewal periods to be effective subsequent to July 21, 1983 but the definition does

include those renewal periods that were currently in existence on July 21, 1983. Therefore, the provisions of Regulation 1574(c)(2) are not available to vending machine operators performing under the renewal terms of a contract that became effective subsequent to July 21, 1983.

Applying the preceding criteria to the example described in your letter, we are of the opinion that neither the automatic nor the optional renewal clauses would bring the contract within the definition of a “fixed term contract” pursuant to Regulation 1574(c)(2)(B) if these renewal terms became effective subsequent to July 21, 1983. Only if the renewal periods are effective on or before July 21, 1983 will they be considered part of a fixed term contract.

In regard to the second part of your first inquiry, we are of the opinion that “a successful 12 month period” would be classified as a renewal period in existence under the definition of a “fixed term contract” if the 12 month period began or was in existence as of July 21, 1983.

The second issue raised in your letter is stated as follows:

“...(the)...definition of fixed-price contract includes, in part, the following: ‘...during the term of the contract’. Our question is: Is the definition of term for this part the same as in fixed term contract discussed previously?”

The definition of “term” for “fixed price contracts” is not quite the same as discussed previously for “fixed term contracts”. A contract is a “fixed price contract” if during the performance of the contract, including any renewal periods, the price to be paid or received by the parties to the contract is fixed (specified) by the provisions of the contract. Therefore, the “term” of a “fixed price contract” can be defined as the time specified in the contract, including any renewals, for the parties to perform their obligations under the provisions of the contract.

Your third inquiry concerns Revenue and Taxation Code section 6359.45(b) which provides that:

“(b) any library district, municipal library, or county library and any vendor making sales pursuant to a contract with a library district, municipal library, or county library is a consumer of, and shall not be considered a retailer of, photocopies which it sells at retail and which are actually sold through a coin-operated machine located at a library facility.”

Since your third inquiry contains within it many subquestions, we will address each subquestion individually below:

- a. “Would a California State University fall within this section? If so, who can the contract be with? i.e. State of California, Student Union, etc.”
- b. “Would a Community College fall within this section? Again, if so, who can the contract be with?”

The requirements for the formation of a library district, county library or municipal library are contained respectively in California Education Code section 19400 et. seq., 19100 et. seq., and 18900 et. seq.

Sections 19402 and 19403 of the Education Code provide that a library district is formed by presenting to the county board of supervisors of the county in which the library district is to be formed a petition, requesting the formation of a library district, signed by a certain percentage of the registered voters within the proposed district. The library district must have a board of trustees as defined in section 19420 of the Education Code and must file with the State Department of Education a certificate showing a library district has been established.

Section 19100 of the Education Code provides that “the boards of supervisors or the several counties may establish and maintain, within their respective counties, county free libraries...” and section 19103 provides that the “inhabitants...(of the county)...shall be entitled to the benefits of the county free library...”

Section 18900 of the Education Code provides that”

“The common council, board of trustees, or other legislative body of any city in the state may, and upon being requested to do so by one-fourth of the electors of the municipal corporation in the manner provided in this article, shall, by ordinance, establish in and for the municipality a public library if there is none already established therein.”

Section 18103 of the Education Code provides that “the (community college library) shall be open to the use of the teachers and the pupils of the...community college district.

Finally, the requirements for the administration of the California State University system are contained in Education Code section 66600 et. seq. In summary, the Education Code provides that the California State University system will be established and administered on a statewide basis by a Board of Trustees, in part, appointed by the Governor and confirmed by the Senate.

A California State University College or Community College library is not established pursuant to the procedures in the Education Code for establishing a library district or a county or municipal library. The State Colleges are established and administered on a statewide basis while Community College libraries are established for the use of the students and faculty of the school. Therefore, we are of the opinion that they do not fall within the provisions of section 6359.45(b) since a contract for photocopy machines must be with a “library district, municipal library or county library.”

- c. “Assuming that ‘a’ and/or ‘b’ above qualify for taxation as a consumer, what would be the proper tax treatment for a single contract covering photocopy machines in the: library, student union, bookstore, resident halls, and administration building.”

Since both a California State University and a Community College library are not “library districts,” county or municipal libraries, pursuant to section 6359.45(b), then these schools’ library, student union, bookstore, resident hall, and administration building are retailers of photocopies which they sell at retail through coin-operated machines.

d. “The history citation of Section 6359.45 references statutes 1983, ch 323, effective 7/21/83 and statutes 1984, ch 1468, effective 1/1/85. What is the proper handling of contracts:

1. Entered into during the period 7/21/83 and 1/1/85?
2. In existence during the period 7/21/83 and 1/1/85?

What are the operative dates of Section 6359-14?”

A vendor making sales pursuant to a contract with a library district, municipal library, or county library prior to January 1, 1985 is a retailer of photocopies which are sold at retail and which are actually sold through coin-operated copy machines located at library facilities unless, pursuant to section 6359.45(a), the vending machine operator is a nonprofit, charitable, or educational organization in which case the vending machine operator is a consumer of, and shall not be considered a retailer of, tangible personal property which is sold at retail for fifteen cents or less and which is actually sold through a vending machine.

Section 6359.45(a) was operative on July 21, 1983 and section 6359.45(b) was operative January 1, 1985.

e. “Would a law library fall within this section?”

f. “Would a private college library fall within this section?”

Since a county or municipal law library is established pursuant to the provisions in the Education Code for the establishment of county or municipal libraries, we are of the opinion that law libraries fall within the provisions of Revenue and Taxation Code section 6359.45(b).

However, a private college library would not fall within the provisions of section 6359.45(b) since it is privately established and administered and not established pursuant to the guidelines in the Education Code for the formation of a “library district” or a “municipal or county library”.

Your fourth inquiry states:

“Does the definition of vending machines for Sales and Use Tax Law include card operated machines? With a card operated machine, the customer purchases a card which entitles him to a certain number of copies. The cards are made for both single use and multiple use. They are read by the machine via a magnetic strip attached to the card.”

“If card operated machines are not considered to be within the definition, what would be the proper tax treatment for a machine that operated from both coin boxes and card boxes?”

We have held in the past that the definition of “vending machines” as used in California Sales and Use Tax Law includes “card” or “key” operated machines.

We hope the above information is helpful. If you have any further questions, please do not hesitate to write this office.

Very truly yours,

Robert K. Stipe
Tax Counsel