



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

February 26, 1973

Attention: REDACTED TEXT
Controller

Gentlemen:

On March 24, 1972 we wrote to you regarding vending machine sales and enclosed the lists you had submitted to us for completion. It has recently been called to my attention that there is one rather off situation that is not covered in your lists, presumably because REDACTED TEXT has not such sales through vending machines. We thought we would call the situation and our conclusion to your attention in case REDACTED TEXT makes such sales in the future.

The question involved is as follows:

Does sales tax apply to sales of hot beverages or hot bakery goods sold through a vending machine for more than \$.15, if the hot beverages or hot bakery goods are consumed at facilities provided by the vending machine operator or by a person with whom the vending machine operator contracts to sell food products to others? We have concluded that the gross receipts from such sales are subject to sales tax.

The oddity is that this is a vending machine situation in which the tax result still turns on the presence or absence of facilities, e.g., tables, chairs, counters, trays, glasses, dishes, or other tableware. The legislation in regard to cold food products sold through a vending machine, and hot food products generally, is thought by some persons to have done away with the facilities distinction.

Yet section 6359 states that subdivision (e), which results in tax applying to sales of hot prepared food products, does not apply to a sale for a separate price of bakery goods or beverages. Nevertheless, hot beverages and hot bakery goods are still hot food products, and there, not subject to the 33 percent rule applying to sales of cold food products through a vending machine. At this point, the sale of hot beverages or hot bakery goods would seem to be exempt, but this is so, only if none of the subdivisions of section 6359 apply so as to deny the exemption. Therefore, when subdivision (b) is applicable, sales tax applies.

Very truly yours,

Donald J. Hennessy
Tax Counsel