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#### Smokeless Cigarettes

"Flavor", a brand of smokeless cigarette which is made in part of tobacco or a tobacco derivative, is not designed for smoking and is therefore not a cigarette as defined in Revenue and Taxation Code Section 30003. 05/27/86.

916/445-6557

May 27, 1986

Dear (Redacted)

This is in reply to your letter (redacted) asking whether "smokeless cigarettes" (sold under the brand name (redacted)) require California cigarette tax stamps. Please excuse our delay in responding.

Each (redacted) is a tube of hard, cardboard-like material in the size and shape of a regular cigarette. The tube is empty except for a disc which completely blocks one end. A warning on the inside of each package states: "This product and all tobacco products contain nicotine. . . ." This suggests that either the tube or the disc, or both, is made from tobacco or a tobacco derivative. However, your letter indicates that - Favors do not contain any tobacco.

(Redacted) are sold in packages of six tubes, and cartons of ten packages. The following instructions are printed on the outside of each package and carton: "You don't light FAVOR. Simply inhale for cigarette taste and satisfaction. [P] For most smokers, a box of six is comparable to an entire pack of conventional cigarettes. [P] Best of all, there's none of the tar or carbon monoxide that comes from burning tobacco. Because you don't light it. Just inhale, for cigarette satisfaction without smoke...

Inside each package the customer is further advised: "WARNING: DO NOT LIGHT... Do not use while damp, or at abnormally high temperatures... The words 'DO NOT LIGHT' are also printed on each tube. The Surgeon General's warning, which is required to be printed on all cigarette packages, is not printed on packages of Favor. However, the Tobacco Merchants Association categorizes Favors as cigarettes for purposes of market analysis.

In relevant part, Section 30003 of the California Revenue and Taxation Code defines the term cigarette to mean "any roll for smoking, made wholly or in part of tobacco..." While it appears that Favors are made in part of tobacco or a tobacco derivative, they are not designed "for smoking," and are therefore not "cigarettes" as defined in the statute. Accordingly, it is our opinion that Favors are not subject to California cigarette tax and do not require California Cigarette tax stamps.

Very Truly Yours,

James E. Mahler

Staff Counsel

JEM:ba

Bc: Excise Tax Unit (MW)