

Memorandum

To: REDACTED TEXT

Date: April 13, 1984

From: Charles J. Graziano

Subject: Taxability of REDACTED TEXT Gum Machine Contracts

This is in reply to your memorandum of January 20, 1984, regarding the retail sale of gum for 15 cents or less through a vending machine under the following circumstances.

You state that REDACTED TEXT, a local distributor of REDACTED TEXT gum products, recently came in to see you. REDACTED TEXT acquired a REDACTED TEXT gum franchise in 1981, and because he was considered to be the consumer of the gum products sold (two cents each) through his vending machines, he has not held a seller's permit. Apparently, the REDACTED TEXT in REDACTED TEXT recently asked REDACTED TEXT for a resale certificate when he purchased gum supplies. REDACTED TEXT claims he was unaware of the recent changes in the Sales and Use Tax Law made with regard to sales made through vending machines effective August 1, 1983. In any case, you would like to know whether REDACTED TEXT is a consumer or a retailer of the gum and candy products sold through vending machines under the REDACTED TEXT with nonprofit civic club sponsors.

For years, REDACTED TEXT has distributed gum and candy products through self-service gum machines in California under the so-called REDACTED TEXT Program. This is done through agreements with individual nonprofit civic clubs, such as the [X] and [Y] Clubs, who find locations for the self-service gum and candy vending machines and receive commissions from sales through such machines for use in their community betterment projects. Each sponsoring civic club obtains the locations for the placement of the vending machines by soliciting from the owners or lessees of the premises a "location permit," which is a mere license terminable at will by the permit grantee. The sponsoring civic club receives 15 percent of the gross income from each self-service vending machine placed at a permitted location. Each vending machine bears a prominent sign which indicates the name of the sponsoring civic club. The sign usually contains a statement from the civic group expressing appreciation for the patronage or may otherwise state the charitable purpose for which the revenue will be expended. The self-service vending machines that are placed at these permitted locations are owned and serviced by a "local distributor," i.e., an independent contractor, such as REDACTED TEXT who has the right and franchise to distribute REDACTED TEXT branded gum and candy products within a certain defined geographic territory. The local distributor purchases the gum and candy supplies sold through the vending machines from REDACTED TEXT.

Effective August 1, 1983, tax applies to the total gross receipts from the sale of food products sold through vending machines (Revenue and Taxation Code Section 6359(e)). Prior to August 1, 1983, all sellers of tangible personal property through vending machines for 15 cents or less were considered consumers rather than retailers of the merchandise actually sold through the vending machines (Revenue and Taxation Code Section 6359.4). As a result of the enactment of AB 223 (Ch. 323, Stats. 1983), Section 6359.4 was repealed as of August 1, 1983, and operative on the same date, Section 6359.45 was adopted. Section 6359.45 provides:

“Any vending machine operator which is a nonprofit, charitable, or education organization is a consumer of, and shall not be considered a retailer of, tangible personal property which sells at retail for fifteen cents (\$0.15) or less and which is actually sold through a vending machine.”

Because of the manner in which the REDACTED TEXT Program is conducted and the representations made on the vending machine signs, the general public apparently considers the various sponsoring nonprofit organizations to be the actual sellers of the gum and candy products sold through the vending machines. It appears that this view was also held by the Legislature when Section 6359.45 was adopted, since the purpose behind this section was to retain the benefits formerly provided under Section 6359.4 with respect to sales of gum balls by nonprofit organizations such as the [X] Club.

Therefore, it is our opinion that pursuant to Section 6359.45, the nonprofit civic clubs sponsors are to be considered the consumers of the gum and candy sold for 15 cents or less through a vending machine pursuant to the above-described REDACTED TEXT Program. Further, the purchase of the gum and candy products which are actually sold under this program by the sponsoring civic clubs is not subject to tax, since these items qualify as an exempt food product for human consumption under subsections (a)(1) and (a)(3) of Sales and Use Tax Regulation 1602.

CJG/jkr