



STATE OF CALIFORNIA

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June 18, 1993

Dear REDACTED TEXT,

This is in response to your letter of January 22, 1993 which requested the application of sales or use taxes to coin-operated machines. Your first example is a machine which asks trivia questions upon the insertion of 25¢. The player chooses a sport, and receives sport cards as prizes if certain bonus questions are correctly answered.

It appears from your description that the primary purpose of this machine is to provide entertainment by challenging a player to test his knowledge of a certain sport. There is no assurance that a player will ever receive any tangible personal property in return for his money. The sport cards are prizes only dispensed to players displaying a certain level of knowledge. If this is true, no sales tax is applicable.

If nearly everyone receives sports cards, and the primary purpose of the machine is to sell sports cards, sales tax would apply. This would be true if the questions were so easy that nearly everyone wins.

Your second example is a machine that is filled with candy which requires the skill of the player in operating a claw before the candy is dispensed. If no appreciable skill is required, sales tax will apply. Regulation 1574(b)(2)(A) provides that "tax applies to the gross receipts from the retail sale of food products dispensed through a vending machine at retail for more than 15 cents...." Subparagraph (b)(2)(C) provides for a partial exemption, based on Revenue and Taxation Code section 6359.2, so that only 33% of gross receipts are subject to tax.

If an appreciable skill is required, and the primary purpose of the machine is to provide entertainment by challenging a player to display the skill of operating the jaw, no tax would apply to the individual sales. The vending machine operator would be the consumer of the product dispensed. The tax would be measured by the sales price of the product to the operator, unless the product is itself exempt, such as candy or other food products.

If you have further questions, please contact me.

Sincerely,

Donald L. Fillman  
 Tax Counsel