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**STATE BOARD OF EQUALIZATION**PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001  
TELEPHONE (916) 445-6450

March 12, 1970

[X]

Dear Mr. [X]:

Mr. Thomas Putnam has asked me to reply to your letter of february 27, 1970 concerning soft-frozen beverage products marketed variously as "slush", "Icee", "Slurpee", "Blizzard", etc.

We do not view such semi-frozen beverage products as similar to flavored ice products such as popsicles or snow-cones. Rather, we view them as beverages which are subject to tax if they are carbonated.

The basis for exempting popsicles and snow-cones was the amendment to a portion of Section 6359 in 1969 which now reads:

"Food products' include all fruit juices, vegetable juices, and other beverages except...carbonated beverages, whether liquid or frozen."

While the statute does not clearly include snow-cones, the justification lies in the fact that insofar as they are beverages, they are non-carbonated. Any similar product which is to enjoy the beverage exemption must meet the terms of Section 6359; namely, they cannot be carbonated.

Thus, the tests for determining the taxability of these semi-frozen beverages is the same as for other soft drinks sold in your stores - - carbonated soft drinks are taxable, non-carbonated soft drinks are taxable, non-carbonated soft drinks are exempt.

The brochure which you provided on "Icee" describes it as "the new way to serve carbonated drinks." The brochure from Handy Dan's Icy drink describes it as "a lively frozen carbonated soft drink in colorful flavors." Accordingly, these are carbonated beverages and subject to tax. It does not appear that the CO<sub>2</sub> is more of a requirement of the freezing process rather than a characteristic of the drink. Rather, it appears that these are carbonated beverages in a slightly different form for serving. In any case, any amount of carbonation whatsoever in the drink makes it a carbonated beverage.

Mr. [X]

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On the other hand, it appears that no carbonation is present in the drinks served through the machine manufactured by "S" or "P" and drinks sold from these machines would be exempt.

I have retained the brochures you provided for our records. If you wish them returned, kindly let me know.

Very truly yours,

Lawrence A. Augusta  
Tax Counsel

LAA:ph [1b]