

590.0000 VENDING MACHINE OPERATORS—Regulation 1574

On federal areas, see Federal Areas. Vending machine business, sale of, see also Occasional Sales—Sale of a Business—Business Reorganization.

590.0010 Air and Water through Vending Machines. A taxpayer is engaged in operating self-service gas stations. Taxpayer has on the premises coin operated vending machines attached to an air compressor and water line. The air and water are not purified or filtered in any way nor are there storage tanks to hold water or air. The machines will dispense either air or water for approximately three and one-half minutes on the insertion of 25¢.

The sale of the air and water through the coin operated vending machine is nontaxable. The sale of the water is within the exemption provided by section 6353. The sale of the air, in this factual situation, is incidental to the furnishing of the services of the air compressor. (See Annotation 275.0020). 8/10/87.

590.0023 City Selling Photocopies at Library. The general rule is that sales tax applies to retail sales in this state of photocopies, whether over the counter, or through coin or card-operated copy machines. However, a municipal library or any vendor making sales pursuant to a contract with a municipal library is a consumer of photocopies sold at retail through a coin or card-operated copy machine located at a library facility. (Section 6359.45.) In other words, sales tax would not apply to such sales of photocopies through a coin or card-operated copy machine located at the library facility. Rather, sales or use tax applies to the sale to, or to the use by, the municipal library of the equipment, paper, ink, or other tangible personal property the library uses to provide the photocopying service. Sales tax applies to over-the-counter retail sales of photocopying (not coin- or card-operated). 8/9/96.

590.0030 Copies Sold by Libraries. Regulation 1574(b)(1)(A) declares, that library districts, municipal libraries, county libraries, or any vendor making sales pursuant to a contract with one of these entities is the consumer, rather than the retailer, of copies sold through coin or card operated copy machines located at the library facility. Libraries of state universities, state colleges, or community colleges do not fall within this provision. 12/18/90.

590.0033 Copies Sold by School Libraries. California State University and Community College libraries are not “library districts, county or municipal libraries” for purposes of Regulation 1574(b)(1)(A). Private college libraries are also not within the scope of the above Regulation since these are privately established and administered. They are not established pursuant to the guidelines in the Education Code for the formation of a “library district” or a “municipal county library.” 2/24/86.

590.0038 Copy-Card Sales. In general, tax applies to sales of photocopies through coin or card operated machines. Although the sale of a copy-card is not a sale of tangible personal property, the sale of the card is an advance collection for the sale of copies. Sales tax reimbursement may be collected at the time the copy-card is sold. 6/24/94.

590.0042 Dispensing Tickets with Numbers. A taxpayer operates a vending machine which dispenses tickets having six randomly selected numbers. The customers can use the numbers to play the State’s lottery game. The sales of the tickets are subject to tax because the tickets are tangible personal property and the operator of this vending machine is governed by Regulation 1574. 1/15/87.

590.0048 Fixed Price Contract. A contract between a vending machine operator and its customer provides that the operator must establish a price to be charged with the consent of its customer and that any increase in price is subject to mutual agreement of the parties. Despite the fact that the contract does not specifically state the mutually agreed upon prices, it is a fixed price contract.

The contract also provides that the operator ceases to be obligated to the fixed price whenever the price of any item dispensed is increased after a specific date. Accordingly, upon the occurrence of this event, the customer is no longer obligated under a fixed price contract and the increased tax rate is applicable. 3/30/84.

590.0055 **Gum Machine Contracts.** Gum and candy products are distributed through self-service gum machines through agreements with individual nonprofit civic clubs who find locations for the self-service gum and candy machines and receive commissions from sales through such machines for use in their community betterment projects. Each vending machine bears a prominent sign which indicates the name of the sponsoring civic club. These self-service vending machines are owned and operated by a “local distributor,” i.e., an independent contractor.

Because of the manner in which this program is conducted and the representations made on the vending machines signs, the general public apparently considers the various sponsoring nonprofit organization to be the actual seller of the gum and candy products sold through the vending machines. Pursuant to section 6359.45, the nonprofit club’s sponsors are to be considered the consumers of the gum and candy sold for 15 cents or less through a vending machine pursuant to this program. Further, the purchase of the gum and candy products which are actually sold under this program by the sponsoring civic club are not subject to tax since these items qualify as exempt food products for human consumption. 4/13/84.

590.0070 **Hot Beverages or Hot Bakery Goods.** Sales tax applies to the gross receipts from the sale of hot beverages or hot bakery goods sold through a vending machine for more than \$.15 if sold for consumption at facilities provided by the retailer or by a person with whom the retailer contracts to sell food products to others. 2/26/73.

590.0090 **Merchandise Sold from an Unattended Box.** Sales made from an unattended box where the purchaser deposits coins into the box and selects merchandise from the box are not sales through a vending machine. A vending machine is a “machine” that dispenses small goods upon the deposit of a coin or coins in a slot. That is, a vending machine responds to the insertion of money by dispensing (i.e. physically releasing) the foods sold through the machine. The box in question is not a vending machine. 3/17/92.

590.0096 **Nonprofit Organization.** Section 6359.45 categorizes the following as consumers of tangible personal property sold through vending machines for 15 cents or less:

- (1) All nonprofit organizations, regardless of purpose;
- (2) All charitable organizations; and
- (3) All educational organizations, whether for profit or nonprofit. 9/1/83.

590.0140 **Operator as Retailer or Employee.** Where a vending machine operator enters into an agreement with a school to furnish and sell all food necessary during the school day to students; is paid on a profit sharing basis; assumes risk of loss; is engaged in a distinct occupation as an organization separate from the school; and maintains insurance covering its operations; it is an independent contractor-retailer and not an employee of the school. Accordingly, the sales of food to students from the vending machines are subject to sales tax. 6/21/67.

590.0148 **Photocopying Machine Copy Cards.** Some copy machines available for the use of the public may be activated by the insertion of coins or by insertion of a pre-purchased “plastic copy card”. Cards may be purchased in various denominations, good for a specified number of copies. Each use of the card reduces the remaining number of copies for which it can be used. The machine returns the card to the customer after each use, including the final use. The customer may then dispose of the card.

The taxpayer is the retailer of the copies and the consumer of the plastic copy cards, which are merely indicia of the pre-paid intangible right to purchase photo copies. 12/18/90.

590.0150 **Posted Tax Included Statements on Vending Machines.** A statement on vending machines such as “tax included on all taxable items” or “applicable tax included” presumes that tax is included only on taxable items and no excess tax reimbursement exists. On the other hand, a statement such as “all sales include tax reimbursement” creates a presumption that tax was charged on all sales and, to the extent there were exempt sales, excess tax reimbursement would exist. 9/9/93; 9/28/94. (Am. 2008–1).

590.0350 Sales of Meals and Food Products Through Vending Machines to Students. Tax does not apply to retail sales of food products or meals, whether served hot or cold, through a vending machine or otherwise by a public or private school to its students. However, this exemption does not apply to such sales of food products and meals to nonstudents.

In those situations where sales of food products and meals are made through the school owned vending machines to both students and nonstudents, a reasonable allocation between exempt and nonexempt sales can be made. In such cases, the school can establish a representative test of the vending machine sales occurring on the affected campuses. However, before implementation of such a test, it is recommended that the school submit the proposed testing procedure to the appropriate Board headquarters' section for review so that it can determine its adequacy and advise the Board's district office serving the affected school's campuses. 10/19/83.

590.0370 School Partnership. An agreement between a school/school district and a vending machine operator whereby the vendor receives 80% of the proceeds of the machines, services the machines, and reserves the right to remove the machines from the premises upon 30 days written notice does not create a partnership between the operator and the school. The 20% of the proceeds paid to the school is in the nature of payment for space and utilities, i.e., rent calculated on a percentage basis. Accordingly, the proceeds from the sale of fruit drinks through the machine are not exempt as sales of food products by a school to its students. 9/19/91.

590.0450 Subsidies. A vending machine operator enters into an agreement with its customers to sell goods through its vending machines on the customer's premises at a reduced price. The customer in turn pays a "subsidy" to the vending machine operator. The "subsidies" are based on the number and type of items sold (e.g., \$.35 for each carton of milk sold). Under these circumstances, the subsidies can be traced to particular sales and are includable in gross receipts. 10/16/85.

590.0800 Vending Machines. A vending machine is filled with small toys which requires the skill of the player in operating a claw before a toy is dispensed. 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 charge for that entertainment. The vending machine operator would be the consumer of the product dispensed.

In general, if a vending machine dispenses tangible personal property to nearly everyone, then the primary purpose of the machine is to sell tangible personal property and the tax application on the sales from this vending machine is governed by Regulation 1574. If there is no assurance that a player will ever receive any tangible personal property, i.e., that receiving any tangible personal property is dependent upon the players skills or knowledge, then receipts from these types of vending machines are not subject to tax. 6/18/93.

590.0810 Vending Machine Sales. Effective January 1, 1990, section 6359.2(c) of the Sales and Use Tax Code establishes statewide uniformity in accounting for sales of cold food products sold through vending machines. Pursuant to this section, 33 percent of the gross receipts from the sale of cold food products sold through vending machines is subject to the sales tax, whether or not eating facilities are provided. The law provides uniformity in taxing gross receipts from the sale of food products sold through vending machines and simplifies tax auditing procedures. 7/13/01.