

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

February 21, 1990

Honorable Cushman Anthony
House of Representatives
State House Station #2
Augusta, ME 04333

Dear Representative Anthony:

You have asked whether a seller of snack foods from cardboard "vending boxes" must collect Maine sales tax on his sales or may, under the so-called "vending machine exemption", 36 M.R.S.A. § 1760(34), pay sales tax on his "wholesale" purchase of the food only. For the reasons which follow, it is the opinion of this Department that the exemption does not apply, and that the sales tax must be collected and paid.

As this Department understands it, the vending device in question is a cardboard box with a money slot into which the purchaser, on the "honor system", deposits the selling price upon taking one of the items for sale. Unlike a typical vending machine, it is not necessary for money to be placed in the box to operate the machine.

The vending machine exemption provides specifically that

[n]o tax on sales, storage or use shall be collected upon or in connection with ...
[s]ales of products for internal human consumption when sold through coin-operated vending machines by a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines.
[emphasis added] 36 M.R.S.A. § 1760(34).

The term "coin-operated vending machine" is not defined in the Sales and Use Tax Law, and, therefore, the scope of the exemption must be determined by the plain meaning of the language used. Webster's Seventh New Collegiate Dictionary defines "vending machine" as "a slot machine for vending merchandise". "Slot machine", in turn, is defined as "a machine whose operation is begun by dropping a coin into a slot". The most relevant definition of "machine" is "an assemblage of parts that transmit forces, motion and energy one to another in a predetermined manner". Based upon these dictionary definitions, it is clear that the vending box is not a "coin-operated vending machine".

In addition, the legislative intent in enacting the vending machine exemption does not support its extension to the selling arrangement at issue. In 1973, an exclusion from sales tax of all sales for 10 cents or less by persons primarily engaged in making such sales was repealed. In its place, an exemption was created for vending machine sales of 15 cents or less by persons who derived more than 50% of their gross receipts from such sales. P.L. 1973, c.766. The rationale for the exemption was explained as follows:

Automatic retailers, unlike their counterparts who sell the same products manually, do not have the ability to collect the sales tax with each sale as is required by law. This is due to mechanical limitations inherent in the equipment in that the machine cannot accept pennies and pricing must, therefore, be made at minimum increments of a nickel....

L.D. 2163, Statement of Fact (106th Legis. 1974). The extension of the exemption to all vending machine sales in 1977 contained an essentially identical statement of fact. L.D. 1355, Statement of Fact (108th Legis. 1977).

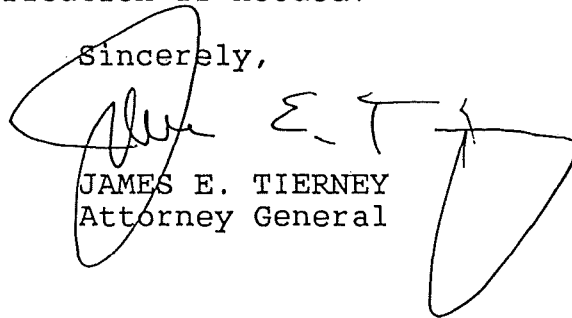
The slots in the cardboard vending boxes, unlike those in coin-operated vending machines, do not control any mechanical function relating to the dispensing of the food and are capable of accepting pennies, if necessary, in payment of sales tax. Therefore, the legislative intent of the exemption for sales made through coin-operated vending machines, to account for mechanical limitations in the machines without requiring the seller to charge an incrementally higher price (rounded to the next higher 5 cents) which arguably would place him at a competitive disadvantage relative to "manual sellers", does not

appear to comprehend extension of the exemption to the cardboard vending boxes.

In summary, because the cardboard vending boxes neither fall within the plain meaning of "coin-operated vending machine" nor appear to be within the legislative intent of the vending machine exemption, this Department concludes that the seller of snack food by means of those boxes must collect Maine sales tax upon his selling price to his customers. This result is compatible with the rule of statutory construction that an exemption from taxation is to be narrowly construed. See Robbins v. State Tax Assessor, 536 A.2d 1127, 1128 (Me. 1988).

In providing this opinion, this Department of course does not take any position about whether the result contained herein is desirable as a matter of policy, but is merely giving its view of the current state of the law. Please feel free to reinquire if any further clarification is needed.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney", is written over a large, hand-drawn scribble that resembles a stylized "E" or a large bracket. The signature is positioned above the typed name and title.

JAMES E. TIERNEY
Attorney General

JET:sw

cc: John LaFaver