

PERCENT OF VENDING MACHINE SALES SUBJECT TO SALES TAX

At the Tax Commission meeting held December 14, 1978, the State Tax Commission adopted the following audit policy for a vendor making sales through a vending machine.

There is a rebuttable presumption that 66 2/3% of the vending machine sales of non-taxable food are considered for off-premises consumption. This presumption may be rebutted by a vendor who can submit evidence to prove that the sales for off-premises consumption are in excess of 66 2/3%.

Thus if a vendor can satisfactorily prove the sales for off-premises consumption are in excess of this ratio, the higher percentage will be accepted by the State Tax Commission.

It should be noted that the ratio of 66 2/3% is to be applied only to food and drink enumerated in section 1115(a)(1) of the Tax Law which are exempt from the tax imposed under section 1105(a). The ratio should not be applied to those items that are subject to tax under sections 1105(a), or 1105(d)(3).

In other words, the percentage is to be applied only to those items that are not ordinarily subject to tax, and not to the total receipts of the seller. Those items not ordinarily subject to tax include items such as pastries, cartons of milk, ice cream, fruit or any other products exempt under section 1115(a)(1), but do not include items such as soda, candy, hot coffee or other prepared foods.