

M e m o r a n d u m**195.1086****To :** Ms. Linda Avakian
Supervising Tax Auditor**Date:** February 9, 1994**From :** Carl Bessent
Staff Counsel**Subject:** Sales of Non-Returnable Containers by Section 6015 Retailers

This memorandum is in response to a memo sent by Brad Bresnahan, Audit Evaluation and Planning, to Gary Jugum, Assistant Chief Counsel. You request our opinion as to whether the strapping used to bundle the S--- D--- U--- T--- (publisher) is sold to the independent contractor-distributor making the (publisher)'s sales of the newspapers with the strapping exempt as sales for resale or are the newspapers sold by the publisher making the (publisher) the consumer of the strapping in the distribution process?

According to a phone conversation that we had on January 3, 1994, the relationship between the "independent contract distributor" and the (publisher) is a newspaper carrier-publisher relationship as compared with a distributor-publisher relationship. The (publisher) Independent Contractor Distribution Agreement refers to the contractor as a "news carrier". Furthermore, you indicated that the newspapers go directly from publisher to carriers.

Revenue and Taxation Code Section 6015(c) states in pertinent part that "a newspaper carrier is not a retailer and the retailer is the publisher or distributor for whom the carrier delivers the newspapers." Thus, the (publisher) is the retailer of the newspapers.

Containers such as strapping are taxable when sold at retail but are not taxable when sold for resale (Revenue and Taxation Code Section 6364; Regulation 1589). The strapping is delivered to the newspaper carriers but not delivered to the buyers along with the newspapers, thus, none of the exemptions in Section 6364 are applicable. On the other hand, the sale of rubber bands to be delivered to the buyers along with the newspapers for which the rubber bands serve as containers, are exempt from the sales tax as sales of nonreturnable containers (Sales and Use Tax Annotation 195.0960 3/4/60). The (publisher) provides the strapping with the newspapers to the newspaper carrier. The (publisher) must be considered the retailer of the newspapers but the consumer of the strapping and sales tax applies to its purchase of the strapping.

CJB/md