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February 25, 1994

Ms. D--- -, C---
XXXX G--- Road
---, CA XXXXX

Re: **Application of Sales Tax on
Deposits For Wooden Pallets**

Dear Ms. C---:

This is in response to your letter of December 16, 1993 to the District Office in Union City in which you inquire as to the application of tax to deposits for wooden pallets you provide to your customers.

Your letter states that your landscaping business sells retaining walls and patio pavers. These items are purchased from a vendor on wooden pallets. The vendor charges a \$15.00 deposit for the pallet, \$13.00 of which is refunded upon return of the pallet. You do not pay any sales tax on the deposit. When you sell the patio pavers and retaining walls to your customers, you similarly provide these items on the wooden pallets. You also charge a \$15.00 deposit and refund \$13.00 when the customer returns the pallet. You ask whether sales tax applies to the deposit.

Retail sales of tangible personal property within this state are subject to sales tax unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) The exemption relevant to the wooden pallets described in your letter is found in Revenue and Taxation Code Section 6364, which states in relevant part:

"Containers. There are exempted from the taxes imposed by this part, the gross receipts from sales of and the storage, use, or other consumption in this State of:

"(a) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

"....

"(c) Returnable containers when sold with the contents in

connection with a retail sale of the contents or when resold for refilling.

"As used herein the term `returnable containers' means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are `nonreturnable containers'."

This exemption for containers, including pallets, is explained in Regulation 1589 (copy enclosed). Regulation 1589(b)(1) states that tax does not apply to sales of returnable containers when sold with the contents in connection with a retail sale of the contents, or when sold for refilling. A container is returnable if it is of a kind customarily returned by the buyer of the contents for re-use by the seller of the commodities contained therein. If title to the container is retained by the seller of the contents or the seller takes a deposit to insure return of the container, it is a returnable container. All other containers are nonreturnable. (Reg. 1589(a).) A deposit, defined as an amount "charged to the purchaser of the contents of the container with the understanding that such amount will be repaid when the container or a similar container is delivered to the seller", is not subject to tax.

Because the customers make a deposit for the pallets, we regard the pallets as returnable containers as defined in subdivision (a) of Regulation 1589. Because the pallets are returnable containers, your customer's deposit with you is not subject to sales tax. However, your letter states that the entire \$15.00 is not returned. As stated above, "deposit" is defined as only "such amount" that will be repaid when the container is returned. We regard only \$13.00 of the \$15.00 amount as a deposit within the meaning of the regulation. The \$2.00 amount which is not returned is considered to be a part of the sales price of the property. When the sale is at retail, that \$2 is included in the measure of tax. In your case, if the sale of the pallets is taxable, the \$2.00 amount not repaid is included in the price of the property sold subject to sales tax.

If you have any further questions please feel free to write us again.

Sincerely,

Sukhwinder K. Dhanda
Staff Counsel

SKD:plh

Enclosure - Regulation 1589