



STATE BOARD OF EQUALIZATION

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Executive Director

December 2, 1996

Mr. T--- E. P---
Z--- P--- Company
XXXX --- ---
--- ---, CA XXXXX

**Re: Z--- P--- Company
SR -- XX-XXXXXX**

Dear Mr. P---:

This is in response to your letter dated September 29, 1996 regarding the application of sales tax to the sale of packaging supplies. You ask:

“We sell packaging supplies to various customers, both within the State of California, and outside the State. A major concern is the proper understanding of the rules. Do we charge tax in the following scenarios?

“Our customer manufactures a product for sale via mail order. The product is packaged, sticking to a card that has a history of origin. When the sale is made, the product is inserted into a plastic bag, then into a box with “peanuts” to immobilize, and cushion it. The box is sealed with carton sealing tape. A packaging list is affixed to the outside of the box and the invoice is put inside. This box along with several others are put on a pallet and strapped down. ‘Fragile’ and ‘This Side Up’ labels are applied, stretch film secures the entire load to the pallet.

My question is, if we possess a signed resale certificate with appropriate numbers, are the following items taxable?

1. Plastic Bag?
2. Peanuts?
3. Box?
4. Carton Sealing Tape?
5. Packing List Envelope?
6. Strapping?
7. "Fragile" and "This Side Up Labels"?
8. Stretch Film?

"...Is the following statement correct? 'If our packaging material is used to get the customers' product to market, our packaging materials are not taxable.'"

All retail sales of tangible personal property are subject to sales tax unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A "retail sale" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (Rev. & Tax. Code § 6007.)

You indicate you sell packaging supplies outside the state. Revenue and Taxation Code section 6396 provides an exemption from sales tax for your sale of tangible personal property which the purchaser requires you to ship, and you do ship, to a point outside the state by your facilities or by delivery to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, or shipment to the out-of-state point. (See Reg. 1620.) If, pursuant to your contract with your purchaser, you are required to ship the packaging supplies to the purchaser out-of-state and do ship out-of-state by the United States Postal Service or by a common or contract carrier, your sale of the packaging supplies to the purchaser out-of-state would be exempt from sales tax.

With respect to sales of packaging supplies in this state, Revenue and Taxation Code section 6364 provides an exemption for certain sales of containers. Sales tax does not apply to the sale of non-returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container. (Rev. & Tax. Code § 6364; Reg. 1589(b)(1)(A).) The plastic bags, boxes, carton sealing tape, and stretch film are containers. (Reg. 1589(a).) We understand that you sell the plastic bags, boxes, carton sealing tape, and stretch film to purchasers who place the contents in the containers and sell the contents together with the containers. We further assume that the containers are not returned to your purchasers. If such is the case, the sales of these containers to your purchasers in this state are exempt sales of nonreturnable containers. Your sales of the styrofoam peanuts, strapping, "Fragile" and "This Side Up" labels to become part of nonreturnable containers are also exempt. (See BTLG Annots. 195.0015 (8/23/88), 195.1840 (4/22/59).)

If you take a timely and valid exemption certificate in good faith, you will not owe sales tax on the transaction to which it relates. (Rev. & Tax. Code § 6421.) Since Regulation 1589 does not set forth a specific exemption certificate for sales of nonreturnable containers, the applicable rules are set forth in Regulation 1667, a copy of which is enclosed. What constitutes a “timely” certificate is explained in subdivision (b) of Regulation 1667. “Good faith” means that you believe that the contents of the certificate are accurate. Subdivision (c)(1) of Regulation 1667 describes what a valid certificate must contain. Your purchasers should certify that they will not make any use of the nonreturnable containers except to place the contents in them and sell the contents along with the containers. Your purchasers must also certify that their purchasers do not customarily return the containers to them.

Packing list envelopes, such as you described are not nonreturnable containers of the product sold. Furthermore, the person purchasing them does not do so to incorporate them into the product sold such that the packing list envelopes are sold for resale. (BTLG Annot. 195.1935 (4/26/71).) The sales of the packing list envelopes to your purchasers in this state are for the purchaser’s use, and the sales are subject to sales tax.

You also ask:

“Another customer buys glue and chip board that become a component and part of his finished product. I believe these items are also not taxable, because when the item is sold, taxes will be charged on the total. Is this correct?”

Sales tax does not apply to sales of tangible personal property to persons who purchase the property for the purpose of incorporating it into the manufactured article to be sold, such as any raw material becoming an ingredient or component part of the manufactured article. (Reg. 1525(b).)

Under the facts you provide, the purchaser incorporates the glue and chip board as an ingredient or component part of the manufactured article to be sold. In that case, your sale of the glue and chip board to the purchaser is not subject to sales tax. However, the burden of proving that a sale of tangible personal property is not at retail is upon the seller unless the seller timely takes a certificate from the purchaser that the property is purchased for resale. (Reg. 1668(a).) If it is not readily evident that your purchaser would be in the business of selling chip board and glue, the resale certificate should be specific and contain a statement that the chip board and glue are being purchased for resale in the regular course of business. (See Reg. 1668(d).)

You further inquire:

“In the event our customer buys masking tape, and plastic sheeting, to be used while spraying some equipment, to eliminate overspray. After the spraying object is complete, the tape and plastic sheeting are discarded. We believe these items are taxable to our customer.”

Sales tax applies to the sale of tangible property to persons who purchase it for use in manufacturing, producing or processing tangible personal property, and not for the purpose of physically incorporating it into the manufactured article to be sold. (Reg. 1525(a).)

Based on the facts provided in your letter, we agree that tax applies to your sale of the tape and plastic sheeting in this state. The purchaser does not incorporate the tape and plastic sheeting into tangible personal property to be sold. Rather, the purchaser uses the tape and plastic sheeting and discards them after that use. Accordingly, sales tax applies to your sale of the tape and plastic sheeting to your purchaser in this state.

This opinion is based on the facts represented in your letter, and the assumptions made above. If our understanding is incorrect, this opinion does not apply. Please write again if you have further questions.

Very truly yours,

Charlotte Chyr
Tax Counsel

CC:cl

Enclosure (Regulation 1667)

cc: --- District Administrator