



STATE BOARD OF EQUALIZATION

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March 11, 1994

BURTON W. OLIVER
Executive Director

Ms. C--- T---
Accountant
S--- D. H---, CPA
XXX --- Road
---, CA XXXXX

Re: **P--- - A--- S---, INC.**
SR --- XX-XXXXXX

Dear Ms. T---:

Your October 15, 1993 letter to Mr. Rick Edelen of the State Board of Equalization has been referred to the Board's legal staff for reply.

From your description of the facts, we understand that P--- - --- S---, Inc., (P---) sells tangible personal property at retail and ships the property to customers in returnable containers.

P--- deducts from the taxable gross receipts of the sale an amount for freight and packing charges.

You sent a copy of P---'s invoice No. 0912 for our review. The invoice shows that P--- deducted \$3,564 for "packing" from the taxable gross receipts of the sale. Your October 15 letter notes that the packing charges are charges for "the cost of packing contents into cylinders that are returnable and resold for filling." You note these charges are separately stated from transportation charges on P---'s invoices; however, invoice No. 0912 does not show a charge for transportation.

Your letter also refers to the exemption from sales tax for sales of certain containers provided by Revenue and Taxation Code section 6364, which provides:

"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.
- (b) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this part.
- (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.'"

Enclosed is a copy of Sales and Use Tax Regulation 1589, Containers and Labels, for your further information. Under the exemption, if P--- provides returnable containers to the customers, tax does not apply to P---'s charge for the containers when P--- sells them in connection with a retail sale of the contents. Also, tax does not apply to the customer's sale of the container back to P--- for refilling. Tax applies to the sale of the returnable containers to P---

You have not provided a description of the facts regarding P---'s transportation of the property to the customer; however, if invoice No.0912 is indicative of a typical transaction, the charge for transportation is not separately stated. Therefore, there is no basis for excluding any charge for transportation from the taxable gross receipts.

There is no exemption in the law for a charge for the labor or service cost of packing the property sold. If P--- must perform the packing in order to sell the tangible personal property or if the purchaser must purchase the packing from P--- as a condition of the purchase, tax applies to the charge. Therefore, unless there are circumstances of which we are unaware, tax applies to P---'s charges for "packing" the returnable container it provides to the customer.

Enclosed for your further information is a copy of Sales and Use Tax Regulation 1628, Transportation Charges.

Ms. C--- T---

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March 11, 1994
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We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:plh

Enclosures