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July 25, 1995

Mr. T--- S---  
M--- L--- Systems, Inc.  
XXXX East --- Road  
---, CA XXXXX

Re: Taxability of Labels  
SR – XX-XXXXXX

Dear Mr. S---:

This letter is in response to two inquiries, each dated April 5, 1995, regarding the application of sales tax to sales of labels.

Your first inquiry concerns labels that will be affixed to packages of products sold by your customers. You have included samples of three different labels which your customers have ordered. These three labels, respectively provide:

- "FREE Offer Enclosed"
- "**FREE!** with Purchase of **PRESS & GO** Nail Colours"
- "Buy 1 Get 1 **FREE**"

Your second inquiry concerns labels that are used by your customer's employees to label packaged products for identification purposes. The three samples you have provided consist of stickers with single digit numbers.

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Revenue and Taxation Code section 6364 exempts from tax the gross receipts from sales of nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

Sales and Use Tax Regulation 1589 (copy enclosed) applies the container exemption to sales of certain types of labels. Specifically, subsection (b)(2)(B) provides that tax does not apply to sales of labels if:

"The purchaser affixes them to nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers."

However, the exemption distinguishes between labels and other types of property such as price tags or advertising materials. Regulation 1589(c)(1) provides:

"Tax applies to sales of such items as price tags, shipping tags and advertising matter used in connection with the sale of property or enclosed with the property sold."

Labels, sales of which qualify for the exemption, include items attached to containers which identify the product or the producer, describe the contents, or instruct the consumer on the application or use of the product. That is, the essential function of a label, within the meaning of the exemption, is to convey information concerning the product which is placed in the container. (Business Taxes Law Guide (BTLG) Annotation 195.1935 (4/26/71).)

The labels included in your first inquiry which respectively announce "Free Offer Enclosed", "Free! With Purchases...", and "Buy 1 Get 1 Free" appear to be advertising materials, the sales of which are taxable pursuant to Regulation 1589(c)(1). The purpose of these labels is to apprise consumers of a free offer or that purchase of one product will entitle the consumer to receive another product free of charge. Since these labels do not describe the contents, or instruct the consumer on the application or use of product sold in conjunction with the manufacturer's offers, the exemption provided under section 6364 does not apply to the sales of these labels. (BTLG Annot. 195.1700 (5/29/51).)

The labels which are the subject of your second inquiry are described as "packer numbers" used by your customer's employees for identification purposes. Labels applied to cans primarily for internal identification purposes are self-consumed **even** if the labels remain on the can when the product was sold. (BTLG Annot. 195.1860 (3/5/65).) Since these labels are to be

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used for internal identification purposes and do not describe the contents, or instruct the consumer on the application or use of product, the sales of these labels will not be eligible for the exemption provided under section 6364.

If you have any further sales and use tax questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen  
Senior Staff Counsel

PHJ:cl

Enclosure

cc: --- District Administrator