

M e m o r a n d u m**400.0190**

To: Long Beach - District Administrator (JKG)

Date: January 4, 1979

From: Headquarters Legal (WEB)

Subject: [M]

I have considered your inquiry at some length and have discussed the matter with other members of our staff.

The question presented is whether a person engaged in packing individual containers of goods for marketing by their resale customers are “packers, loaders, and shippers” therefore subject to the separate statement of the price and title requirements of Sales and Use Tax Regulation 1630.

We understand that typically the individual carton or other containers will be supplied by the person performing the packaging service (otherwise there is no tax problem). He not only performs the service of packaging the individual goods in containers designed for display or ultimate sale but also performs the service of packing a group of individual containers in a fiberboard container or other similar container used to ship and store the merchandise prior to its ultimate sale. After the work is performed the goods are either returned to the resale customer or held for pickup at his direction.

The provisions of Regulation 1630 are directed to persons who purchased tangible personal property “to be used in containing the goods to be shipped and to preserve, protect and contain the goods during transportation.” While persons engaged in this latter activity package goods in containers in the course of performing their services, the activity is clearly directed to transportation of the property and not to preparation of the goods for sale. They are regarded as the consumer of the materials utilized in performing this service unless they meet all of the requirements for providing a sale of the nonreturnable containers prior to use.

This taxpayer’s activity seems to be distinguishable in that packing of its goods for transportation is merely an incidental part of its function. Its charge is essentially rendered for furnishing an attractive container for the individual items and the actual packaging of the property as a final step in the preparation (processing) of the goods for sale.

It is our conclusion that the provisions of Regulation 1630 should not be applied where the packing of the goods for transportation is merely an incidental part of the activity. Accordingly, unless the principal portion of the activity (more than 50%) involves the cost of goods and services utilized to prepare, preserve and protect the goods during transportation, the person should not be regarded as a “shipper” subject to the provisions of Regulation 1630. If the predominant function involves the furnishing of individual containers to be resold with the property and the service of packaging goods in the containers for purposes of ultimate resale, a resale certificate may be accepted to exempt the charge notwithstanding the absence of a separate statement and title clause.

Undoubtedly, a situation will arise in which a packer whose principal function involves the preservation, protection and packaging of the goods for transportation purposes will contend that it is entitled to the exclusion because it customized shipping containers that remain with the property at the time of sale. A decision will have to be made on a case-by-case basis as to whether the customer acquired the service to preserve, contain and protect the goods during transport or primarily as a final processing and packaging for the independent purpose of marketing the products.

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