



STATE BOARD OF EQUALIZATION

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May 29, 2002

Mr. G--- B---
Principal
---, LLP
XXX --- --- Street
--- ---, California XXXXX

Re: SB 1210

Dear Mr. B---:

This is in response to your letter dated May 6, 2002 regarding the interpretation of "shipment" in Revenue and Taxation Code section 6364.

Subdivision (d) of section 6364 was added in 1999 to provide an exemption for the sale and use of:

"Containers, when sold or leased without the contents to persons who place food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged prior to sale."

You note that this exemption applies only when the containers are used for "shipment." You cite a definition of "shipment" as being transportation, and from that, you state that "transportation" is defined as the movement from one place to another. You further state that the exemption "does not require any transfer to the possession of someone else." You continue:

"It appears clear that the legislature also contemplated that containers used internally by a food processor would also be exempt from tax because the legislature provided that the exemption will not be lost if the food products are not sold in the same container that was used while the food products were remanufactured or repackaged prior to sale.

“We are asking that you confirm for use that all returnable containers, as described below, used on farms to hold berries as they are picked and move from one place to another, even that [sic] movement may be short in distance, qualify for the exemption under SB 1210 even though the container itself will not leave the farm. For purposes of this letter you may assume that the berries are food for human consumption and that the berries will ultimately be sold.

“The berries are harvested by hand. The berry is picked and placed in a small container. That container, with the berries in it, is moved from one place to another in the field as it is being filled. When full the contents are generally transferred to another larger container. As this larger container is being filled it will move down the field. When filled that container may then be used to ship the berries just to a paved road where the berries are transferred to another container for shipment on the road. It seems clear each of the containers described above were used for shipment and qualify for the exemption under SB 1210. There is nothing in the legislative file to indicate that the legislature meant anything other than to exempt all of these containers.”

While we agree that there is no requirement that the shipment of the food in the containers result in a transfer of possession from one person to another, we do not agree that “shipment” simply means *any* movement of the property, nor that the Legislature intended such a meaning.

The term “shipment” does have a common and usual meaning, and we believe that it is that meaning that was intended by the Legislature and must be applied by the Board. Placing berries in a small container and moving that container from one end of a field to another, even a large field, is simply not commonly referred to as “shipment of the berries to the other end of the field.” Although not directly on point, we believe that one of the elements of the definition of mobile transportation equipment is helpful in this regard. As relevant to the present discussion, subdivision (a)(1) of Regulation 1661 provides:

“The term does not include items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area, such as a loading dock, warehouse, terminal, bay or airport. Examples of such items are hand dollies, forklift trucks, mine cars, pilot boats, tugboats and lighters, not including, however, lighters or barges specifically designed to be carried regularly aboard vessels for substantial distances. The term does include pickup trucks and tangible personal property which is or becomes a component part of mobile transportation equipment.”

Utilizing this prior interpretation as a guide, we believe that it is appropriate to regard the movement of the container as “shipment” for purposes of the exemption if the container, with its contents, is transported from the confines of a limited area, generally on the public roads of the state, to another location. For example, the transport of a container from one farm to a processing facility at another location is a shipment of the container for purposes of the exemption. However, the movement of a container from one location on a farm (e.g., the fields) to another location on the farm (e.g., a storage or processing facility on the same farm) is not shipment for purposes of the exemption.

I note that, contrary to your contention that “there is nothing in the legislative file to indicate that the legislature meant anything other than to exempt all of these containers,” the legislative history, if anything, indicates that our interpretation described above is probably beyond the legislative *intent*. In fact, the sponsor of the bill (C---) sought exemption for the sale and use of pallets that it leased (sold) without the contents. The pallets were used to ship food products throughout the world (i.e., the use of these pallets qualify for the exemption regardless of whether “shipment” is applied with its usual meaning or instead is interpreted to cover any movement whatsoever, as you propose). C---’s estimate of its revenues from leasing the pallets for shipment of food products for eventual sale translated into about \$600,000 sales and use tax revenue per year. Since C--- was the largest supplier of qualifying pallets, the Board estimated that adoption of the exemption would result in a revenue loss of less than \$1,000,000 per year (Department of Finance’s estimate of annual general fund revenue loss was in the range of \$631,000, which was the state portion of the \$1,000,000 total estimated revenue loss). This revenue estimate based on leased pallets was the basis of the Legislature’s action. The other aspect to the Legislature’s adoption of this exemption was to encourage the use of returnable containers (that is, pallets that were leased, and then returned for leasing) rather than nonreturnable containers. This consideration has no relevance in the scenario you propose.

The purpose for the exemption was described to the Legislature by its staff as follows:

“The bill’s sponsor is seeking an exemption for its leases of pallets/containers to manufacturers who use the returnable pallets/containers to transport agricultural products to their customers - similar to how nonreturnable packaging material purchased by produce packers are treated under BOE regulation.”

This again confirms that the Legislature thought that, by adopting SB 1210, it was providing an exemption for the sale and use of returnable containers used to ship food products ultimately to be sold when, under otherwise identical circumstances, the sale and use of nonreturnable containers would qualify for exemption. That is, the Legislature contemplated that the *contents* of the container would be transferred by the shipper to its customers.

Notwithstanding what we believe to be the clear legislative intent, the actual language of the exemption does not require that ownership of the contents of the container be transferred to customers after shipment, only that the contents be shipped in the containers and that the contents eventually be sold (with or without further processing). Thus, despite that legislative

intent, we have regarded the sale and use of containers to qualify when the purchaser of the containers uses them to ship qualified food products from one facility to a facility at another location, even if there is no change of possession in the contents at the end of that shipment. However, as just noted, this interpretation is already beyond the actual *intent* of the legislation. That intent certainly provides no basis for interpreting the term “shipment” to mean something far broader than its usual meaning for the purpose of broadening the exemption to go even further beyond the original intent of the Legislature in adopting the exemption. We thus decline to do so.

Sincerely,

David H. Levine
Tax Counsel IV

DHL:ljt

cc: Mr. Timothy W. Boyer (MIC:83)
Ms. Janice Thurston (MIC:82)
--- --- District Administrator (--)