M e m o r a n d u m

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To: Inglewood – Auditing   (RLR)   May 14, 1987

From: Tax Counsel (LS) – Headquarters

Subject: Regulation 1589

This is in response to your memorandum of July 19, 1982. Your memorandum raised three questions relative to the application of Revenue and Taxation Code section 6364 and Regulation 1589. First, you asked whether the customary use of a particular type of container governs its classification as returnable or nonreturnable or whether such classification is determined by how the taxpayer used it. Second, you wondered whether a refillable container, in order to be deemed returnable, must be resold to the original seller of the container's contents. Finally, you questioned whether the initial use of a container as nonreturnable imposes a nonreturnable exempt status upon it for all subsequent usages.

In responding to each of your questions, you asked that we assume that the containers are resold with the contents, i.e., the seller does not require a deposit, and title to the container passes to the purchaser.

As to your first question, generally speaking, the customary usage of particular containers will control their classification as returnable or nonreturnable. This result is called for by the language of the governing statute, Revenue and Taxation Code section 6364, which provides in pertinent part "…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.'"

Regarding your second question, there is no requirement in the law that a returnable container, to retain its classification as such, be resold to the original seller of the contents for refilling. Resale may be made to other sellers for refilling.

Finally, with respect to your third question, if a container is sold first as a nonreturnable container, it retains that characterization in subsequent transactions. This result is consistent with the definitions of the terms "returnable containers" and "nonreturnable containers" discussed in responding to your first question. Where the containers are initially sold as "nonreturnable containers," we will assume that containers of that kind are not containers of a kind customarily returned by the buyer of the contents for reuse.

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