

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
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April 2, 1990

Mr. W--- -, O---  
Assistant Tax Manager  
L--- P--- C--- Company  
XXX --- Mall  
P.O. Box XXX  
---, -- XXXXX-XXXX

L--- P--- C--- Company – SR -- XX-XXXXXX  
Returnable Containers – deposits charged on pallets

Dear Mr. O---:

In your January 17, 1990 letter to the Board's legal staff, you request our opinion on the application of sales tax on pallets. You write:

“A supplier sells bags of sand to L--- P--- C--- Company. ‘Supplier’ charges L--- a deposit for the pallets. L--- in turn sells the bags of sand to its customers and charges a deposit for the pallets. The bags of sand and pallets are resold to ‘Customer’ by L--- P--- C--- Company in the same form as received from ‘Supplier’. L--- P--- C--- Company makes no modifications to the product or the pallets.

“‘Customer’ returns the pallets to L--- P--- C--- Company and receives a refund of the deposit. L--- P--- C--- Company in turn returns the pallets to ‘Supplier’, and receives a refund of the deposit from ‘Supplier’.

“Is ‘Supplier’ considered the final consumer of the pallets and liable for California Sales Tax on the pallets? If so, are all other transactions concerning the pallets nontaxable, since ‘Supplier’ is liable for the Sales tax? If ‘Supplier’ isn’t liable for the Sales Tax, what is the correct application of Sales Tax?”

Opinion

The application of sales and use tax to the situation you describe is covered by Sales and Use Tax Regulation 1589, Containers and Labels. Subdivision (a) of that regulation includes several definitions of terms. It states that the term "containers" includes pallets. The term "returnable containers" means containers of a kind which are customarily returned or resold by the buyers of the contents for reuse by the packers or sellers of the commodities contained in the container. If the seller takes a deposit for the container, the container is a returnable container. The term "deposit" means an amount charged to the purchaser of the contents of the container with the understanding that the amount will be repaid when the container or a similar container is delivered to the seller. Subdivision (b) of this regulation describes the application of tax to containers. Tax does not apply to sales of returnable containers when they are sold with the contents in connection with the retail sale of the contents, or when they are resold for refilling.

In your situation, the supplier is the consumer of the pallets, and tax applies to his purchases of the pallets. When the supplier ships the sand with the pallets to L--- P--- C--- Company and charges a deposit for their return, and likewise when L--- ships the sand in the pallets to the customer and charges a deposit for their return, neither the transaction between the seller and L--- nor the transaction between L--- and its customer constitutes a taxable sale of the pallets. The seller's sale to L--- is a nontaxable sale for resale since L--- will make no use of the pallets other than to resell the together with the sand to its customer. The retail sale of the sand from L--- to its customer does not include a taxable sale of the pallets because they are returnable containers sold together with the contents.

I enclose Regulation 1589 for your information. Please feel free to contact me if you have any further questions or comments about this letter.

Sincerely,

John Abbott  
Senior Tax Counsel

JA:jb  
Enclosure