



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

April 17, 1972

Mr. T. Y---
Plant Manager
L--- C--- Corporation
XXXX --- --- Street
--- ---, CA XXXXX

SY -- XX XXXXXX

Dear Mr. Yoshiyama:

This is in reply to your letter of March 15, 1972 regarding the application of the tax to "portable" containers.

We understand that L--- C--- Corporation leases containers from a lessor company which charges the tax on the rentals paid by you.

You state that it is your impression that the tax should not be applicable as you are filling the containers with a product for resale.

We assume that by "portable" it is meant that the containers are returnable containers. "Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse.

The sale of returnable containers is not exempt from the tax for the reason that they are filled with a product which is sold for resale where the container is not also sold with the contents.

Section 6006(g) of the Revenue and Taxation Code provides that a "sale" means and includes any lease of tangible personal property for a consideration. However, property upon which the lessor has paid the tax on the purchase price and which is leased in substantially the same form as acquired is excepted from the definition of a sale.

Since your lessor is charging tax on the rental receipts, we assume the tax was not paid by him on the purchase price of the containers or that the containers are not leased in substantially the same form as acquired by him and the lease of the returnable containers here involved is a sale (by lease) within the above section with tax applicable to the rental receipts.

We necessarily have made some assumptions for the purposes of our reply. If these assumptions are incorrect or if you have further questions in regard to the matter, write to us again. We suggest, however, that you present the specific details of the questioned transaction.

Very truly yours,

Joseph Manarolla
Tax Counsel

JM:smb