

**STATE BOARD OF EQUALIZATION**

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

August 30, 1988

S--- M---
S--- P--- Co.
P.O. Box XXXX
--- ---, California XXXXX

RE: SR – XX-XXXXXX

Dear Mr. M---:

This is in response to your letter received by us on January 4, 1989 regarding the application of sales tax to your sales of pallets to 7-Up/Royal Crown Bottling Companies of Southern California (7- Up).

You apparently pay sales tax on the gross receipts from your sales of pallets to 7-Up, collecting reimbursement for that tax from 7-Up. In the letter to you dated June 24, 1988, 7-Up requests a rebate of sales tax (reimbursement) it paid to you for 1985 through 1988. 7-Up's basis for this request is that, under Regulation 1589, sales tax does not apply to sales of returnable containers when resold for refilling.

7-Up correctly notes that pallets are defined as containers under Regulation 1589. If the pallets purchased from you by 7-Up are customarily returned to 7-Up by its purchasers for reuse by 7-Up, then the pallets are returnable containers. Under these circumstances, if the pallets you sell to 7-Up were new, your sales would be subject to sales tax. (Reg. 1589(b)(1).) Your question arises because your sales to 7-Up are of remanufactured or reconditioned pallets and 7-Up asserts that you are reselling the pallets for refilling.

Although you have not provided enough facts for us to provide you with a definite answer, it appears that 7-Up may be correct in its assertions. The critical question is whether you create an item considered to be new pallet by virtue of your work, or whether the pallets would still be regarded as used after you have finished your reconditioning. If new, your sales would be subject to tax. If used and sold to 7-Up for refilling, your sales would be exempt.

One case we have decided in this area regarded drums. The seller reconditioned oil drums by replacing the tops, bottoms, and plugs of the drums and then thoroughly cleaning and repainting the drums. We concluded that the reconditioned drums could in no way be considered used. Rather, we concluded that the seller was selling new returnable containers and that the sales were subject to sales

tax. If, on the other hand, your reconditioning of pallets involved merely adding a few nails where necessary, replacing an occasional board, and cleaning and repainting, the pallets would probably be regarded as maintaining their status as used. Our conclusion would depend on the particular facts of your reconditioning.

We suggest that you file a claim for refund on this issue. The claim may be in letter form and should be sent to the Refunds Unit at the address above. It must state the specific grounds upon which the claim is based, which would be that your sales were exempt resales of returnable containers for refilling. You should describe the particular facts involved in your reconditioning, which would include a description of the actual parts, materials, and labor involved. Please also attach a copy of this letter to your claim. If your sales to other customers besides 7-Up involve the same facts, you may wish to include all such sales in your claim. If your claim is granted, it would be conditioned upon your refunding the sales tax (reimbursement) you collected from your customers to those customers.

The limitation period for filing a claim for refund is three years from the last day of the month following the close of the quarterly period for which the overpayment was made. This means that if you file a claim for refund by April 30, 1989, your claim may include all quarters of 1986, 1987 and 1988. Since the limitations period for the last quarter of 1985 expired on January 31, 1989, any claim for that period would now be barred.

Since there will be a period from the time you file a claim for refund, assuming you do so, and the time the Board acts on that claim, we provide you with the following information. As you know, the sales tax on your sales is imposed upon you as the seller. Amounts you collect from your customers which you may designate as "sales tax" are actually sales tax reimbursement. Civil Code Section 1656.1 authorizes you to collect such reimbursement if you do so by contract (e.g., listing sales tax on your invoices). If your contracts with your customers do not provide for sales tax reimbursement (or "sales tax"), there would be no statutory authority for you to collect reimbursement from your customers for your sales tax liability. We note that in its letter to you, 7-Up states that it has ceased honoring sales tax charged on your invoices. While you wait for the Board to act on any claim you may file, we advise you to continue invoicing your customers for such sales tax if you wish to have a contractual right to collect reimbursement from your customers for any sales tax liability you may have. This way, if the Board rules against your claim, you would have the contractual right to do so. Otherwise, if the Board concludes that you owe sales tax but your contracts do not provide for reimbursement for such sales tax, you would be required to pay the sales tax you owe even though you would not have the contractual right to collect reimbursement from your customers for that tax.

Sincerely,

David H. Levine
Tax Counsel

DHL/smt