

M e m o r a n d u m**195.1660**

To: Mr. J. S. Knight (JHMcC)

Sacramento
March 8, 1950

From: E. H. Stetson

Subject: Taxability of purchases of
used bottles by bottlers,
brewing companies, and others

This is in reply to your memo of December 20, 1949, and follow-up of February 21, 1950, concerning the application of tax with respect to the sales of used bottles.

You refer to previous holdings in connection with the acquisition of used bottles by breweries and inquire whether there has been any change in our thinking on this subject.

You state that you are now auditing a bottler of [soda] who has acquired used bottles from another [soda] bottler in Arizona, none of these bottles supposedly having formerly entered California. Section 6364 of the Sales and Use Tax Law, effective July 1, 1943, provides in part that there are exempted from the tax the receipts from the sale of, and the storage, use, or other consumption of "(c) returnable containers... when resold for refilling". This provision of the statute would appear to remove all doubt as to the legality of the practice to which you refer respecting acquisition of used beer bottles by breweries, and it appears equally applicable with respect to the transaction involving the acquisition of used [soda] bottles mentioned in your memo. Accordingly, it would appear that, by virtue of specific statutory exemption, the acquisition of such bottles would not be a transaction with respect to which either the sales tax or the use tax applies.

EHS:ph