

**STATE BOARD OF EQUALIZATION**

(916) 324-8208

May 29, 1992

Ms. K--- L. E---  
C--- F--- E---  
P.O. Box XXXXXX  
---, California XXXXX

Re: Application of Tax to Labels  
S- -- XX-XXXXXX

Dear Ms. E---:

This is in response to your letter dated March 25, 1992, in which you state:

"I am writing you in regard to a question on labels that C--- F--- E--- sells to markets and deli's. One of our customers purchases Hobart 1860 commodity labels for their scale which is a label without the price but has lb. and Keep Refrigerated on it. They were taxed by us and feel that they shouldn't have been.

"I am enclosing a copy of a label catalog showing various labels that we sell and also a label list with a few samples attached. Please send me the ruling on these various labels as we are taxing the majority at this time to be safe."

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. Rev. & Tax. Code § 6007. Although the sales tax is imposed on the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. Civ. Code § 1656.1.

Revenue and Taxation Code section 6364 exempts from tax the gross receipts from sales of nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

Sales and Use Tax Regulation 1589 (copy enclosed) applies the container exemption to sales of certain types of labels. Specifically, subsection (b)(2)(B) provides:

(2) LABELS. Tax does not apply to sales of labels or name-plates if:

(B) The purchaser affixes them to nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.

Not all sales of labels are nontaxable. Regulation 1589(c)(1) provides:

“PRICE TAGS. Tax applies to sales of such items as price tags, shipping tags and advertising matter used in connection with the sale of property or enclosed with the property sold.”

The distinction between a taxable shipping tag and a nontaxable label turns primarily on whether the purchaser will use the item for his or her own purposes or for the use of the purchaser's customer. Business Taxes Law Guide (BTLG) Annotation 195.1740. Nontaxable labels include items attached to containers which identify the product or the producer, describe the contents, or instruct the consumer on the application or use of the product. That is, the essential function of a nontaxable label is to convey information concerning the product which is placed in the container. BTLG Annotation 195.1935.

A combination shipping tag and directive use label is taxable since it is regarded as used as a shipping tag by the vendor prior to use by the customer. BTLG Annotation 195.1780. Where a label shows the weight of the contents and the price or shows the trade name or any other description of the article and the price, it is not primarily a price label. BTLG Annotation 195.2060.

Applying these guidelines to your list of labels on the document entitled “FLOURESCENT PRESSURE SENSITIVE LABELS,” we believe that, with two exceptions, you have accurately identified the labels whose sales can be exempt. Sales of blank labels can be exempt if the purchaser does not use them as a price tag, shipping tag, or an advertising label. We are not sure what “His and Her” labels are used for. If these labels describe the product, sales of such labels can also be exempt.

In addition to the labels on this list, sales of the “PESTICIDE FREE” labels and the scale labels which include notations for “net weight” or “keep refrigerated” can be exempt. The scale labels which only contain the notation “THANK YOU” are taxable unless the purchaser will add to the label an instruction or a description such as the weight.

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If the Hobart 1860 labels are affixed to the packaging sold with the deli products, your sale of these labels is exempt because the labels contain a description (the weight) and instructions ("Keep Refrigerated").

All gross receipts from sales of tangible personal property are presumed taxable until the contrary is established. Rev. & Tax. Code section 6091. To protect your business, you should obtain exemption certificates from each purchaser for the sales of labels, which can be exempt. Otherwise, your sales are presumed taxable until you can establish that they are exempt sales. We are enclosing Regulation 1667, which explains what information must be contained in an exemption certificate and when it must be issued. Exemption certificates are valid only if complete, timely, and taken in good faith and should not be accepted for labels such as shipping tags, which cannot be exempt.

If you have further questions regarding sales and use tax law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu  
Tax Counsel

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Enclosures