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November 16, 1993

REDACTED TEXT

Re: Application of Tax to Sales of Labels

Dear REDACTED TEXT:

This is in response to your letter of October 12, 1993 in which you inquire as to the application of tax to sales of labels manufactured by REDACTED TEXT. The labels are sold to restaurants, retailers and packers at retail.

Applicable Law

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.

Revenue and Taxation Code section 6364 exempts from tax the gross receipts from (1) 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 and (2) sales of returnable containers when sold with the contents in connection with a retail sale of the contents or when sold for resale.

Sales and Use Tax Regulation 1589 applies the containers exemption above to sales of certain types of labels. Specifically subsection (b)(2)(B), of Regulation 1589 states:

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

(B) The purchaser affixes them to non-returnable 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.”

However, sales of certain types of labels are subject to tax. Regulation 1589(c)(1) provides that 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.

Labels usually considered nontaxable include those which are attached to containers to 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. (Sales and Use Tax Annotation 195.1935 (4/26/71).)

Applying these guidelines to the sample labels you enclosed, we conclude that these labels are not price tags or shipping tags but rather are instructing the consumer on the use of the product. Your sales of these labels are exempt from the sales tax if your purchaser affixes these labels 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. For example, if the restaurant, retailer or packer affixes these labels to the meat packages to be sold, then your sale of these labels to the restaurant, retailer or packer are exempt from sales tax. If the purchaser of these labels does not use these labels in this specified manner, then your sales of these labels would be taxable.

All gross receipts from sales of tangible personal property are presumed taxable until the contrary is established. (Rev. & Tax Code § 6091.) You should obtain an exemption certificate from a purchaser for each sale of these labels if the purchaser will use the labels for an exempt purpose. Otherwise, your sales are presumed taxable until you can establish that they are exempt sales. 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. Regulation 1667, which explains what information must be contained in an exemption certificate and when it must be issued, is enclosed.

If you have any further questions, please do not hesitate to write again.

Sincerely,

Sukhwinder K. Dhanda

SKD:plh  
Enclosures – Regulations 1589 and 1667