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November 14, 1995

BURTON W. OLIVER
 Executive Director

Ms. [F]

[B]

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Re: [B]

Account No. S- -- XX-XXXXXX

Dear Ms. [F]:

This is in response to your letter dated September 18, 1995 asking how tax applies to the sale of Flower Pot Bread Baking Kits (the "Baking Kits") composed of a six-inch clay pot with a package of bread mix inside the pot. The clay pots are covered with decorative wrapping and imprinted paper.

Discussion

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.) The sale of food products for human consumption, as defined in Regulation 1602, is exempt from sales and use tax under Revenue and Taxation Code section 6359, with certain exceptions not relevant here.

The Baking Kits are combination packages which contain both food product (e.g., bread mix) and nonfood product (e.g., clay pot). The application of tax to the sale of a combination package depends upon the essential character of the complete package. (Reg. 1602(b); BTLG Annot. 245.1430 (2/10/92).) If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood merchandise, a segregation must be made and the tax is measured by the retail sales price of such nonfood merchandise. (Id.)

In your situation, the container consists of the decorative wrapping and the imprinted paper covering the clay pot, as well as any articles in which the Baking Kits are placed for

shipment and delivery such as wrapping and packaging materials, boxes and cartons. (Rev. & Tax. Code § 6364; Reg. 1589; BTLG Annots. 195.0040 (11/1/57), 195.0800 (3/8/50), 195.1020 (3/27/53).) If the clay pot represents more than 10 percent of the retail value of the Baking Kit, exclusive of the container, a segregation must be made and the tax is measured by the retail sales price of the clay pot. However, if the clay pot represents 10 percent or less of the retail value of the Baking Kit, exclusive of the container, the sale of the Baking Kit for a lump sum price would be exempt from tax.

You have attached a letter from [A] Co., the manufacturer of the Baking Kits, which states that the clay pot represents 20 percent of the total cost of the product. As discussed above, the application of tax to the sale of the Baking Kits depends upon the retail value of the clay pot, rather than the cost. However, because the cost of the clay pot represents 20 percent of the total cost of the Baking Kit, we would expect that the retail value of the clay pot represents more than 10 percent of the retail value of the Baking Kit, exclusive of the container. Therefore, a segregation must be made and the tax is measured by the retail sales price of the clay pot.

For your information, I am enclosing a copy of Regulations 1589 and 1602. If you have any further questions, please write again.

Sincerely,

Sophia H. Chung
Staff Counsel

SHC:rz

Enclosures: Regs. 1589 and 1602

cc: --- --- District Administrator - --