



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-2641

April 18, 1977

A--- --- I---, Inc.
XXX --- ---
--- --- ---, CA XXXXX

Attn: Mr. J--- -. F---

Gentlemen:

S – XX-XXXXXX

On March 22, 1977, we were asked by Mr. D--- R--- to write to you with respect to the application of our Regulation 1630 “Packers, Loaders, and Shippers.”

Regulation 1630 provides, in paragraph (b)(2), as follows:

“PROPERTY USED AS CONTAINERS OR PARTS OF CONTAINERS OF GOODS SHIPPED. When the shipper is not the seller of the contents, the sale of the containers or container materials or parts to the shipper is a taxable retail sale unless the shipper expressly contracts with his customer for the sale to his customer of the container or container material, making a separate charge therefore, with title passing from the shipper to his customer before any use of the material is made, and without any understanding or trade custom that the property will be returned to the shipper for reuse. When all of these conditions exist, the shipper may purchase the property for resale by giving a resale certificate to the supplier of the property. The sale of the property by the shipper is taxable unless exempt as a sale to the United States, as a sale in interstate or foreign commerce, or exempt for any other reason.”

Mr. R--- inquired as to how a shipper might establish to the satisfaction of the Board that container materials have been sold by the shipper to his customer prior to use. As the regulation indicates, a separate charge must be made to the customer for the packing materials. The materials must not be returned to the shipper for reuse. The contract must expressly provide that title to the packing materials will pass from the shipper to the customer prior to the time the packing materials

are used for packing. The express agreement must be in a document executed prior to the packing operation. We have recognized the following sentence, which may be printed or stamped on quotation sheets, acknowledgements, or other documents of the contract, as sufficiently establishing that title passed as required.

“Customer agrees that title to all packing material passes to customer before any use of such material is made.”

The shipper is required to retain documents concerning time of passage of title. The title provision must appear on a document executed prior to packing. If the title provision appears only on an invoice, the shipper will have failed to establish that title to the packing materials passed to the customer prior to use.

Very truly yours,

Gary J. Jugum
Tax Counsel