

M e m o r a n d u m**195.0155**

To : Mr. Vic Anderson, Supervisor
Special Projects (MIC 40)

Date: July 7, 2003

From : Robert D. Tucker, Tax Counsel
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Subject: California Redemption Value Fee and Self Consumed
Beverages by a Beverage Distributor

This is in response to your memo dated March 10, 2003 requesting information on how use tax applies to beverages self-consumed by beverage distributors. I apologize for the delay in my response. You write:

“We request an opinion [on] whether the California Redemption Value (CRV) is part of the cost subject to use tax on beverages self-consumed by beverage distributors. It is our intent to recommend annotation of the opinion provided. There has been inconsistent treatment of the CRV audits of beverage distributors and we have not found clear legal guidelines to resolve the issue.”

For the purpose of this response, we assume that beverage distributors purchase the tangible personal property that is incorporated into the beverages (and the beverage containers) they sell using a valid and timely resale certificate. Accordingly, we assume the beverage distributors do not pay sales tax reimbursement (or use tax) when purchasing this tangible personal property. As you are aware, a purchaser who issues a resale certificate for the purchase of tangible personal property and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for use tax on the cost of the property. (Reg. 1668(g).) You ask if the California Redemption Value (CRV) fee is to be included in the cost of the property upon which the use tax is computed.

The Beverage Container Recycling and Litter Reduction Act places a CRV fee on the beverage distributor on all beverage containers sold or offered for sale in this state by the distributor. (Pub. Resources Code, § 14560.) As relevant here, you provided a printed copy of a Department of Conservation, Division of Recycling, web page titled, “ ‘More’ Frequently Asked Questions,” dated July 27, 2001. This list of questions includes the following question:

“Is a distributor required to report and pay CRV on products donated to charitable organizations, institutions, etc.?”

“Yes. CRV must be paid to the department on all covered beverages, whether sold or transferred in this state.”

Accordingly, the CRV is required to be paid when a beverage distributor donates beverages to a charitable organization or other third party.

Use tax applies to the storage, use, or other consumption of tangible personal property purchased from any retailer for the storage, use, or other consumption in this state, measured by a percentage of the sales price, unless that use is specifically exempt by statute. (Rev. & Tax. Code, §§ 6011, 6201.) “Sales price” generally includes all amounts received with respect to the sale of tangible personal property, with no deduction for the cost of materials used, labor or service costs or other expenses of the retailer, or the cost of transportation of the property, unless there is a specific statutory exclusion. (Rev. & Tax. Code, § 6011.) We assume that the use of the property is not an exempt use of the property (e.g., this is not property donated by retailers to qualified organizations and therefore subject to exemption as provided in Revenue and Taxation Code section 6403).

As relevant here, the CRV is not imposed on the sale of tangible personal property to the beverage distributor. Rather, the fee is imposed on the beverage distributor upon the transfer of the container to a dealer or consumer. (Cal. Code Regs., tit. 14, § 2320.) Accordingly, since the CRV fee is not a fee that is paid to the seller of the tangible personal property to the beverage distributor, but rather is a fee paid by the beverage distributor upon the sale or transfer of the containers to third parties, it is not included in the “sales price” of the tangible personal property to the beverage distributor and therefore is not a component of the “cost” upon which the use tax is computed to be due. On the other hand, if the tangible personal property (the beverage and beverage container) is self-consumed by, or transferred to, someone *other* than a beverage distributor (someone who has purchased or received the tangible personal property from the beverage distributor), since the CRV is thereafter included in the “sales price” of the tangible personal property, the CRV is a component of the cost upon which the use tax is computed. (Cf. Sales and Use Tax Annotation 195.0150 (11/4/93).)

I hope this answers your questions. If you have any further questions after reviewing this memo, please write again.

RDT:ds

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