

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-5550

WILLIAM M. BENNETT  
First District, Kentfield

BRAD SHERMAN  
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.  
Third District, San Diego

MATTHEW K. FONG  
Fourth District, Los Angeles

GRAY DAVIS  
*Controller, Sacramento*

July 14, 1992

BURTON W. OLIVER  
*Executive Director*

Mr. J--- B---  
P--- R---  
XXXX-XX --- ---, Suite XXX  
---, California XXXXX

Re: S- -- XX-XXXXXX

Dear Mr. B---:

This is in response to your letter dated June 23, 1992. You have sold pallets to a farmer who believes your sale is exempt from sales tax under Regulation 1589. He has advised you that he sells his food product on the pallets to various wholesalers and he does not get the pallets back. You ask whether your sales of pallets to the farmer are subject to sales tax.

All your retail sales of tangible personal property are subject to sales tax unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6364 provides an exemption for certain sales of containers. Subdivision (a) exempts from sales tax 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.”

The exemption for containers is explained in Regulation 1589, a copy of which is enclosed. The term container includes articles on which tangible personal property is placed for shipment, and specifically includes pallets. Assuming the farmer does not use the pallets except to place his product on them and sell the product together with the pallets, the remaining question is whether the pallets are returnable or nonreturnable containers. (If they are returnable containers, your sale to the farmer would not be exempt from tax.) The farmer stated that he does not get the pallets back. Thus, they would be considered nonreturnable containers.

As relates to your inquiry, unless you take an exemption certificate, your sale of pallets will be presumed to be a taxable retail sale until you establish otherwise. Proving that your sale is exempt would involve establishing that the farmer made no use of the pallets other than to place his product on them and sell the product together with the pallets as well as establishing that the farmer's customers did not customarily return the pallets to him. Needless to say, you do not want to be in the position of having to make this showing. The way you avoid it is by taking an exemption certificate.

If you take a timely and valid exemption certificate in good faith, you will not owe sales tax on the transaction(s) to which it relates. (Rev. & Tax. Code § 6421.) Since Regulation 1589 does not set forth a specific exemption certificate for sales of nonreturnable containers, the applicable rules are set forth in Regulation 1667, a copy of which is enclosed. What constitutes a "timely" certificate is explained in subdivision (b) of Regulation 1667. "Good faith" means that you believe that the contents of the certificate are accurate. Subdivision (c)(1) of Regulation 1667 describes what a valid certificate must contain.

The description in the regulation of the contents of a valid certificate is self-explanatory, so I will not repeat it here. The last item mentioned is a statement of the manner in which the property will be used so as to make the sale exempt from tax. As pertains to your inquiry, the farmer should certify that he will not make any use of the pallets except to place his product on them and then sell the product along with the pallets. He must also certify that his purchasers do not customarily return the pallets to him.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine  
Senior Tax Counsel

DHL:cl

Enclosures (2)