

M e m o r a n d u m

400.0032

To : Mr. Jerry Cornelius - MIC:40

Date: March 5, 1997

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Subject: Containers

This is in response to your e-mail of February 14, 1997.

As you are aware, Regulation 1589 was recently amended. That regulation now provides in paragraph (b)(1)(B) that tax does not apply to sales of nonreturnable containers when sold without the contents to persons who place food products for human consumption in the containers for subsequent sale.

At the time the regulation was amended, we failed to take into account the fact that it had been our long-standing interpretation of Revenue and Taxation Code section 6364 that tax did not apply to sales of nonreturnable containers without the contents to persons who engaged in commercial packaging for others by placing those persons' products into the containers for subsequent sale. Thus, as early as April 1, 1953, we recognized that tax does not apply to sales of baling wire to persons who use the baling wire in the commercial bailing of alfalfa for others. BTLG Annot. 195.1260. See also Annotation 195.0330 re commercial cotton ginners (4/19/89).

It was not the intention of the Board in amending Regulation 1589 to reverse prior administrative determinations or otherwise restrict the exemption. This memorandum should be annotated to make that point clear.

GJJ:sr