



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
Telephone: (916) 322-2976
FAX: (916) 323-3387

JOHAN KLEHS
First District, Hayward
DEAN ANDAL
Second District, Stockton
ERNEST J. DRONENBURG, JR.
Third District, San Diego
BRAD SHERMAN
Fourth District, Los Angeles
KATHLEEN CONNELL
Controller, Sacramento

BURTON W. OLIVER
Executive Director

March 24, 1995

Re: A

Dear Mr---:

This is in response to your letter dated January 13, 1995 regarding the application of sales tax to your sales of pallets to a common carrier.

You state that the carrier, B., which also does business under the name C., provided you with a blanket certificate of exemption. You ask whether the sales of pallets to C. are exempt from tax, and whether, if C. provides you with a blanket certificate of exemption, you are to ask it how it proposes to use the pallets. With your letter, you have attached a copy of the certificate that C. provided to you in which it states that it is claiming the exemption because it is a common carrier.

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) The sales tax is imposed upon the retailer, but the retailer may collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.)

There are two basic exemptions that might apply to your sales of pallets. One concerns sales made to common carriers, and the other concerns certain sales of containers. Regulation 1621, a copy of which is enclosed, explains the application of tax to sales made to common carriers. As explained in subdivision (b) of Regulation 1621, Revenue and Taxation Code section 6385(a) exempts from sales tax the sale of tangible personal property, other than fuel and petroleum products, to common carriers when such property is:

"(A) Shipped by the seller via the facilities of the purchasing carrier under a bill

of lading, to an out-of-state point, and

"(B) Actually transported by the common carrier to the out-of-state destination, pursuant to the bill of lading, over a route the California portion of which the purchasing carrier is authorized to transport cargo under common carrier rights, and

"(C) Not put to use until after the transportation by the purchasing carrier to the out-of-state destination, and

"(D) Used by the carrier in the conduct of its business as a common carrier."

As explained in subdivision (c)(1) of Regulation 1621, for your sale to be exempt you must receive at the time of the transaction, and retain, a properly executed bill of lading, or a copy thereof, pursuant to which the goods are shipped. That bill of lading must show that you are the consignor and must indicate that the described goods are consigned to the common carrier at the specified destination outside this state. (Please note this requirement that the property be consigned to a destination outside California, not simply to a point beyond California's territorial limits.) The bill of lading will be considered obtained at the time of the transaction if it is received either before you bill the purchaser for the property, within your normal billing and payment cycle, or upon delivery of the property to your purchaser.

In addition to the bill of lading, you must also obtain from the purchaser prior to or at the time of the transaction, and retain, a certificate in writing that the property shall be transported and used in the manner described in subdivision (b)(1) of Regulation 1621. The certificate shall be in substantially the same form as certificate A or B, appearing in the appendix of Regulation 1621. Certificate B may be used when multiple transactions claimed as exempt are made between a seller and a carrier and may be included as part of a transaction by reference to the certificate on the purchase order or other appropriate documentation for each transaction.

The certificate C. provided to you includes information regarding your identity, the identity of C., and a description of the activities of C. However, it does not include a description of the property to be purchased. Furthermore, it does not clearly certify that C. is a common carrier lawfully authorized and permitted to operate as such under the laws of the United States, and it does not certify that the pallets are to be shipped to a specific out-of-state destination for use by C. in the conduct of its business as a common carrier. Moreover, the copy of the certificate provided to us does not certify that the property purchased will not be used to carry a payload or for any other purpose prior to its delivery at the destination point. Thus, the certificate C. provided to you does not contain sufficient information to constitute a certificate in substantially the same form as certificate A or B as set forth in Regulation 1621. Therefore, your acceptance of a certificate such as the blanket exemption certificate C. provided to you will not entitle you to regard the gross receipts from your sales of pallets to it as being exempt from tax

pursuant to section 6385.

If, in the future, you accept in good faith an exemption certificate from C. which is substantially in the form of certificate A or B, and the transactions between you and C. satisfy all of the requirements discussed above, and you accept the proper documentation within the time periods specified, you will not owe sales tax on your sales. Acceptance "in good faith" means that you believe the contents of the certificate are accurate. As long as you accept the documentation in good faith, you do not need to inquire further about C's use of the pallets. (See Reg. 1621(d)(1).)

As explained in subdivision (e) of Regulation 1621, if C. gives you a certificate of exemption which entitles you to regard the gross receipts from the sale as exempt from sales tax under section 6385, but it then uses the pallets in some other manner or for some other purpose, or fails to document the transportation of the property to the first out of state destination, C. is liable for payment of sales tax as if it were a retailer making a retail sale of the property at the time of such use. (See Rev. & Tax. Code §§ 6421, 6385(e).)

The other possible exemption is provided by Revenue and Taxation Code section 6364, which provides an exemption for certain sales of containers. Regulation 1589, a copy of which is enclosed, explains that the term "container" includes articles on which tangible personal property is placed for shipment, and specifically includes pallets.

Pallets may be classified as either returnable or nonreturnable containers, depending on how the pallets are used. Subdivision (a) of Regulation 1589 defines the term "returnable containers" as containers of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers, or sellers of the commodities contained therein. All other containers are "nonreturnable containers."

Subdivision (b) of Regulation 1589 explains that tax does not apply to sales of:

"(A) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

"(B) Returnable containers when sold with the contents in connection with a retail sale of the contents, or when resold for refilling.

"(C) All containers when sold with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or the use tax."

Tax applies to all other sales of containers except sales for the purpose of resale to other sellers of containers who purchase them for resale without the contents. (Reg. 1589(b)(1)(C).)

Mr. ---

-4-

March 24, 1995
500.0130

Unless you take an exemption certificate, your sales of pallets will be presumed to be taxable retail sales until you establish otherwise. If you take a timely and valid exemption certificate in good faith, you will not owe sales tax on the transaction(s) to which the certificate relates, and you will not have to provide additional information about how your purchasers use the pallets in order to establish that your sales are not taxable. Regulation 1589 does not set forth a specific exemption certificate for nontaxable sales of containers, but the applicable rules are set forth in Regulation 1667, a copy of which is enclosed.

If a purchaser issuing you an exemption certificate for nontaxable sales of containers uses the pallets in some other manner or for some other purpose, that purchaser shall be liable for payment of sales tax as if the purchaser were a retailer making a retail sale of the property at the time of such use, and the sales price of the property to the purchaser shall be deemed the gross receipts from such retail sale. (See Reg. 1667(b)(3).)

It does not appear that your sales of pallets to C. qualify for the section 6364 exemption. That is, it is our understanding that C. purchases the pallets in order to use them in its common carrier business, and does not sell the pallets with their contents to its customers. It therefore appears that the only basis for exemption would be under section 6385, and as discussed above, your sales pursuant to the "exemption certificate" issued to you by Prime, Inc. do not qualify for the section 6385 exemption.

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

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl
Enclosures (3)

cc: Oakland District Administrator