



STATE BOARD OF EQUALIZATION

November 29, 1965

Gentlemen:

The attachment to your 2nd Quarter 1965 sales and use tax return in which you claim exemption from sales tax of the transfer on June 8, 1965 of all of your property to "P" upon the basis that the sale is an occasional sale has been referred to the undersigned for consideration and comment.

The sale of nonreturnable molded pulp food containers is, in our opinion, an activity requiring the holding of a seller's permit. Such a permit is required by Section 6066 of the Sales and Use Tax Law of every person desiring to engage in or conduct business as a "seller" within this state. Section 6014 defines "seller" to include "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax."

The sale of nonreturnable molded pulp food containers at retail (e.g., to an institution or other purchaser not selling the contents) would be subject to the sales tax. It is only when resold along with the contents that under Section 6364 they may be purchased ex tax by the person who places the contents therein and sells the contents together with the container. The person selling the contents in the containers would be required to pay tax on the total amount charged for the entire package, i.e., container plus contents, unless the sale of the contents were exempt as in the case of food products. Since the sale of the containers by you is exempt only because they are resold and not because of any exemption applicable to all sales of such containers, the selling of them requires the holding of a seller's permit, and, in fact, you hold permit No. "X". Therefore, the property which is the subject of the sale in question was held or used in an activity which required the holding of a seller's permit and, therefore, the sale of the equipment does not qualify as an exempt occasional sale under Section 6006.5 of the Sales and Use Tax Law.

Very truly yours,

E. H. Stetson
Tax Counsel

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