

400.0000 PACKERS, LOADERS, AND SHIPPERS—Regulation 1630

See also Containers and Labels. Export packers, see also Interstate and Foreign Commerce.

(a) GENERALLY

400.0016 Bubble Pack, Styrofoam Pellets, and Styrofoam Sponges. Bubble pack, styrofoam pellets, and formed in place styrofoam sponges are packing materials. If sold to packers and shippers who use them to protect goods during shipment, tax applies to the sale, because packers and shippers are consumers of packing materials. If sold to persons who are also the sellers of the property shipped, they may be purchased for resale because the materials become part of nonreturnable containers which are resold with the property shipped. 8/23/88.

400.0020 Carbon Dioxide. Under section 6359.8, the sale to and use by the consumer of carbon dioxide used in packing and transporting fruits and vegetables for human consumption is exempt from sales and use taxes provided the fruits and vegetables are not sold to the ultimate consumer in a package that contains the carbon dioxide.

Therefore, the packer, loader, or shipper is the consumer of the carbon dioxide in providing the service. It may issue an exemption certificate with respect to such property where the sale and use satisfy the requirements of the exemption provided by section 6359.8. 3/14/95.

400.0028 Container Materials. To establish to the satisfaction of the Board that container materials have been sold by a shipper to its customer prior to use, the shipper must make a separate charge to the customer for the packing materials. The materials must not be returned to the shipper for reuse. The contract must expressly provide that title to the packing materials will pass from the shipper to the customer prior to the time the packing materials are used for packing. The express agreement must be in a document executed prior to the packing operation. The shipper is required to retain documents concerning time of passage of title. The title provision must appear on a document executed prior to packing. If the title provision appears only on an invoice, the shipper will have failed to establish that title to the packing materials passed to the customer prior to use. 4/18/77.

400.0032 Containers Sold to Commercial Packers. Tax does not apply to sales of nonreturnable containers without the contents to persons who engage in commercial packaging for others by placing those persons' products into the containers for subsequent sale. This has been the Board's long-standing interpretation of section 6364. The amendments to Regulations 1589 and 1630 that provide 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 sales were not intended to reverse prior administrative determinations or otherwise restrict the exemption. 3/5/97. (M99-1).

400.0060 Fruit Preservatives. Fumold and Ethylene oxide gas placed in packed bags of fruit as preservatives during shipment are subject to tax. The packer or shipper makes a use of these items. 8/21/53.

400.0080 Furniture. Persons engaged in packing and moving furniture for others are consumers of the packing materials used in such activity. 1/7/55.

400.0120 Lumber Used in Block Pipe Shipped in Railroad Cars, regarded as consumed, not sold by vendor of pipe. 12/10/51.

400.0160 Packing List and Envelope. Shippers are regarded as consumers of packing lists which are enclosed with the merchandise and of the envelopes in which the packing lists are enclosed. 2/1/51.

400.0170 Packing and Packaging Only. The terms of Regulation 1630 also apply to persons who only pack and package but do not ship. 7/11/75.

400.0180 Passage of Title. Provisions such as "packing container charge includes container and materials which remain the property of the consignee," and "packing rates include packing service of carrier

furnished containers,” are insufficient to establish that the title to containers and packing materials passed to the customer prior to use by the carrier. Pursuant to Uniform Commercial Code section 2401, title passed at the destination since there was no explicit agreement to the contrary. 5/12/75.

400.0190 Processing or Packaging for Purposes of Sale. The provisions of Regulation 1630 are directed to persons who purchased tangible personal property to be used in containing the goods to be shipped and to preserve, protect, and contain the goods during transportation. The provisions of this regulation are not applicable where the preservation and packing of the goods for transportation is merely incidental to the performance of a sales activity. If the principal activity involves the sale of the goods or the processing or packaging of goods in individual containers for purposes of sale, then a resale certificate may be accepted to exempt the charge, notwithstanding the failure to comply with the provisions of Regulation 1630. 1/4/79.

400.0220 Salt. Carriers are consumers of the salt which they use to refrigerate merchandise for shippers. This is true even if they bill the shipper separately for such salt. The ice or dry ice exemption does not apply and the sale of the salt to the carrier is 100 percent taxable irrespective of whether or not the food products are shipped in interstate commerce. 10/14/54.

400.0224 Shipping Containers—Sales to U.S. Government. Shipping containers which are priced on the invoice to the customer based upon the hundred weight of the total shipment would become identified to the contract at the time the carrier withdraws them from inventory for the particular job. Such withdrawal satisfies the Uniform Commercial Code identification requirements. Therefore, if the three requirements of Regulation 1630(b)(2) were met, the sale of the container to the carrier would be for resale and the sale to the U.S. government would be exempt. One of the three requirements is that the contract specifically provides for the passage of title prior to use. In the past U.S. government contracts generally have not contained such a provision. Without such a provision, the shipper would be the consumer of the containers. 7/21/89.

400.0230 Zeropacs Used in Shipping Live Brine Shrimp. A taxpayer places frozen Zeropacs (refrigerant gel packs) in the cardboard box used in shipping live brine shrimp to its out-of-state customers. A separate charge is made to the customers for the Zeropacs which are reusable.

The activity of freezing the Zeropacs constitutes a use for shipping purposes. Thus, the taxpayer is liable for tax on its purchase price of the Zeropacs. 11/30/90.

(b) ICE AND DRY ICE

400.0240 Aircraft. Dry ice sold and used in refrigerating food served as meals on aircraft is not within the exemption of section 6359.7. The statutory exemption only applies in cases where food products are shipped as cargo in the usual sense to an out-of-state destination. 4/18/55.

400.0260 Fishermen. Sale of ice to fishermen for preserving their catch of fish to be used for human consumption is exempt from the tax, if transported between a point or points beyond the territorial waters of this state and unloading docks in this state. 6/30/50.

400.0266 Freezing and Preserving Nonfood Product. A firm is engaged in the business of selling premixed, de-gassed, frozen epoxy (resin systems). The products must be quick frozen in mini tubes or polyethylene syringe type containers. The firm purchases dry ice. Twenty-five to thirty percent of the dry ice is used to quick freeze the product. The remainder of the dry ice is packed around the tubes and syringes to keep the product frozen during transportation to the customers.

Under these facts, the firm is the consumer of the dry ice whether it is used for quick freezing of the product or in the transportation process. In the processing, the dry ice does not become a component part of the resin system but rather it is used to freeze the product. The ice that is packed around the product for shipping is purchased primarily for the purpose of keeping the product frozen and not as a container. 4/24/87.

[400.0280](#) **Liquid Nitrogen.** Liquid nitrogen is not within the meaning of the terms “ice” or “dry ice” used in shipping food products outside the state and is not exempt under section 6359.5 (now 6359.7). 8/24/65. (Am. 2003–1).

[400.0300](#) **Precooling.** Sales of ice used in precooling food products for human consumption for shipment in interstate commerce is exempt from sales tax. 9/28/55.

[400.0320](#) **Precooling.** Ice used for precooling grapes to be shipped in interstate commerce is exempt from tax whether or not the grapes are held in storage prior to shipment, provided the grapes are not processed after precooling; the subsequent gassing of the grapes to prevent molding does not constitute further processing. However, the use of ice for storing grapes from the end of the harvest season until the date of shipment is a non-exempt use and all sales of ice delivered ten days after the harvest season are presumed to be used for such storage purposes. 7/19/61.

[400.0340](#) **Processing—Use Before.** The exemption of ice applies only in the packing and shipping of food products in interstate commerce. It does not apply to ice used as cooling agents of products prior to processing. 3/2/56.

[400.0360](#) **Processing—Use Before.** Ice is not exempt from tax under section 6359.7 when used to cool a food product before it is sharp-frozen and stored until shipped out-of-state, which may be from one to 120 days after freezing. In the broadest meaning, the word “packing” could include all steps in the preparation of the article which is packed. But in section 6359.7, the Legislature used the word in a narrower sense. This is apparent from the joining of “Shipping or transporting” with “packing” by the conjunction “and.” If the broad meaning were intended, the disjunctive “or” would have been used. Thus, the exemption applies to ice used in “packing and shipping,” and it is limited to ice used in connection with both packing and shipping. Where the ice is used and thereafter something remains to be done to the product prior to the shipping, the exemption is inapplicable. 3/11/59.

[400.0380](#) **Shipping Non-Food Items.** A company engaged in heat-treating aluminum is the consumer of dry ice used for the purpose of keeping aluminum parts cold while shipping them to customers subsequent to treatment; it may therefore be purchased on a tax-paid basis and the charge made to customers on account of the ice need not be included in the measure of the tax declared and paid on its returns. 4/15/60.

[400.0390](#) **Super Ice.** “Super Ice” is a chemical solution sealed in plastic containers which may be frozen and used as an ice substitute. When used by a fish company to preserve fish delivered to its customers, the “Super Ice” is considered as being used rather than sold to the customer along with the fish. It also does not qualify as a nonreturnable container since it does not contain the fish delivered but merely preserves the fish from deteriorating while it is delivered. Accordingly, the sale of “Super Ice” to the fish company is a taxable retail sale. 8/29/88.

[400.0450](#) **Zero Pack.** The exemption from sales and use tax for ice and dry ice does not apply to Zero Pack. 10/19/77.