

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
PENRYN LUMBER COMPANY ) Account Number SR KH 100-529270  
) Case ID 554162  
Petitioner ) Orangevale, Sacramento County

Type of Business: Wholesaler and retailer of lumber

Audit period: 10/01/06 – 09/30/09

<u>Item</u>	<u>Disputed Amount</u>
Disallowed claimed sales for resale	\$640,290
Tax determined and protested	\$45,528.82 <sup>1</sup>
Interest through 09/30/14	<u>20,407.65</u>
Total tax and interest	\$65,936.47
Payments	<u>- 0.51</u>
Balance Due	<u>\$65,935.96</u>
Monthly interest beginning 10/01/14	<u>\$227.64</u>

This matter was scheduled for hearing in December 2012 but was postponed at petitioner's request in order to allow time to submit additional documentation. The Board Proceedings Division gave petitioner until April 2, 2013, to submit additional documentation, but petitioner did not do so. Petitioner did present a document on April 8, 2013, in which it made the same arguments that had been made previously, but it did not include any additional evidence. The matter was then rescheduled for hearing in May 2013 but was postponed at petitioner's request to allow additional time to prepare. It was again rescheduled for hearing in August 2013, but was postponed for settlement consideration.

**UNRESOLVED ISSUE**

**Issue:** Whether adjustments are warranted to the measure of disallowed claimed nontaxable sales for resale. We conclude that no adjustments are warranted.

<sup>1</sup> The amount of tax determined is net of a concurred credit of \$4,876.22 related to unclaimed deductions for tax-paid purchases resold. Since petitioner filed a claim for refund of the overpayment during the audit, a refund will be made if petitioner prevails in this matter.

1 For the audit period, petitioner reported total sales of \$2,760,100 and claimed deductions  
2 totaling \$2,058,158, including \$1,899,397 for nontaxable sales for resale, resulting in reported taxable  
3 sales of \$701,942. Included in its claimed sales for resale were sales of dunnage and other similar  
4 materials (lumber and plywood) to Norton Lilly International and Transmarine Navigation  
5 Corporation. The Sales and Use Tax Department (Department) concluded that these purchasers  
6 operated as packers, loaders, and shippers, and that they purchased the lumber and plywood to secure  
7 cargo being shipped out of the country by their international clients. Specifically, the lumber and  
8 plywood were used to create a stable floor within vessels upon which rice was placed for shipment,  
9 protecting the rice from coming into contact with the metal of the ship during transport. The  
10 Department concluded that the lumber and plywood were used to condition, preserve, and protect the  
11 rice during shipment, and thus that the sales of the lumber and plywood were taxable under California  
12 Code of Regulations, title 18, section (Regulation) 1630, subdivision (b)(1)(A), resulting in the  
13 disallowance of 40 claimed nontaxable sales totaling \$640,290.

14 Petitioner contends that the floor created by use of the lumber and plywood qualifies as a  
15 container. Although subdivision (b)(1)(A) of Regulation 1630 provides that “Tax applies to sales to  
16 shippers of property used in conditioning the goods to be shipped, or to preserve and protect the goods  
17 during transportation,” petitioner asserts that this is the exact kind of purpose that a container serves.  
18 Petitioner asserts that the subject lumber and plywood should be regarded as having been used as  
19 containers for the rice, and that petitioner’s sale of that lumber and plywood was thus exempt from tax.

20 Revenue and Taxation Code section 6364 provides an exemption for nonreturnable containers  
21 when they are sold or leased without the contents to persons who place food products for human  
22 consumption in the containers for shipment. Regulation 1589, subdivision (a) defines containers as  
23 “articles in or on which tangible personal property is placed for shipment and delivery.” However,  
24 Regulation 1630, subdivision (b)(1)(A) states that tax applies to sales to packers, loaders, and shippers  
25 of “property used in conditioning the goods to be shipped, or to preserve and protect the goods during  
26 transportation.” The regulation specifically distinguishes between property used to condition the  
27 goods for shipment or preserve and protect the goods during shipment (Cal. Code Regs., tit. 18,  
28 § 1630, subd. (a)(1)) and property used as containers (Cal. Code Regs., tit. 18, § 1630, subd. (a)(2)).

1 As relevant here, bracing materials and dunnage or “loose” lumber are regarded as property used to  
2 condition the goods for shipment or preserve and protect the goods during shipment, except when used  
3 in the same manner as pallets.

4 We conclude that the purchasers did not use the lumber and plywood as pallets, for example, to  
5 move the rice into the ship and to move the rice out of the ship on such pallets. We conclude that the  
6 lumber and plywood were used specifically to prevent the rice from coming into contact with the metal  
7 of the ship, and to prevent the rice from shifting during shipment, that is, as a brace, thereby preserving  
8 and protecting the rice during shipment, coming squarely within Regulation 1630, subdivision  
9 (b)(1)(A). Accordingly, we conclude that there is no basis for adjustment.

10 **OTHER MATTERS**

11 None.

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13 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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