

195.0000 CONTAINERS AND LABELS—Regulation 1589 *See also Mailing Lists and Services.*

(a) IN GENERAL—NONRETURNABLE CONTAINERS

195.0020 Adhesive Tape. Tax does not apply to the sale of imprinted adhesive tape to be used to encircle two packages of the purchaser's product and to advertise that two packages may be purchased for the price of one. The tape is a nonreturnable container. 11/1/57.

195.0040 Advertising Label-Tape as Container. The sales tax applies to the sale of easily removed premium offer labels to be wrapped around the purchaser's already labeled product. However, the sales tax does not apply to the sale of imprinted adhesive tape to be used to encircle two packages of the purchaser's product and to advertise that two packages may be purchased for the price of one. The tape is a nonreturnable container. 11/1/57.

195.0048 Artwork. When an ad agency develops artwork for a client that will be used in reproducing the image on the packaging of software which is to be resold, the sale of the artwork is subject to sales tax. (Regulation 1540(b)(4)(B).)

On the other hand, when the ad agency only prepares the artwork for its own use and contracts with the client only to sell the packaging, the total charge for the sale of the packaging to the client is exempt as a sale of a nonreturnable container. (Regulation 1589(b)(1)(A).) 5/27/93.

195.0060 Bale Ties. Bale ties sold to persons who bale hay, either as "commercial balers" or as owners of the hay, are exempt from tax as nonreturnable containers if the hay is to be sold. 9/13/53; 8/1/63.

195.0070 Bee Boxes. Tax applies to retail sales of new or used bee boxes to beekeepers in this state unless the sale is exempt as an occasional sale. 8/5/75; 5/20/96.

195.0075 Berry Containers. Revenue and Taxation Code section 6364(d) provides an exemption for the sale and use of:

"Containers, when sold or leased without the contents to persons who place food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged prior to sale."

These conditions are not met when berry containers move from one end of a farm to the other end, or to points in between on the farm, during the harvesting of the berries. "Shipment" as used in the statute does not simply mean *any* movement of the property. The movement of a container from one location on the farm (e.g., the fields) to another location on the farm (e.g., a storage or processing facility on the same farm) is not shipment for purposes of the exemption. 5/29/02. (2003–2).

195.0080 Blood Collection and Blood Pack Units. The items in blood collection units and blood pack units, all of which form an integral, interconnected package, are exempt as nonreturnable containers pursuant to Revenue and Taxation Code section 6364 when sold to plasmapheresis centers and blood banks which use them to collect blood or blood components and then sell the blood or components together with the bags and tubing in which they are contained. Blood pack units

may consist of a plastic bag or bags, tubing, and a needle. Two types of blood collection units supplied are: (1) a manual system which consists of a needle, multiple bags, a bag containing a saline solution, tubing, filters, grommets and a pooling bag and (2) an automated system which consists of a needle, a bag of citrate (anticoagulant), tubing, a plastic bowl containing a stainless steel centrifuge and a pooling bag.

Plastic bags and tubing sold to plasmapheresis centers are also exempt as nonreturnable containers when the centers use them to collect blood plasma or platelets and then sell the plasma or platelets together with the bags and tubing in which they are contained.

No exemption applies with respect to other items, including bags, tubing, needles, clamps and filters that are not sold by the blood banks and plasmapheresis centers together with the blood or blood components. 6/24/75; 10/30/89.

(Note: Opinion is superseded by section 6364.5 and Regulation 1589(b)(1), operative April 1, 1998.) (Am. 2000–2).

195.0100 Bottles Purchased for Use in Producing Sparkling Wines. Bottles used merely as containers of wine during the fermentation process and which do not contribute to the manufacturing process in any other way, are exempt as containers under section 6364, provided they are resold with the wines. 4/1/53.

195.0115 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.

195.0120 Bungs and Corks. Sales of wood bungs and tap corks to breweries are considered as nonreturnable container material exempt from tax. 2/8/54.

195.0140 Burlap Material and Twine, purchased by nursery to wrap around root area of a tree to be sold, is nonreturnable container. 11/10/50.

195.0150 California Redemption Value. The California Redemption Value which is charged on containers is not a deposit. It is properly regarded as part of the gross receipts subject to tax. 11/4/93.

195.0155 California Redemption Value (CRV) Fee. The Beverage Container Recycling and Litter Reduction Act places a CRV fee on the beverage distributor on all beverage containers sold or offered for sale in this state by the distributor. This fee is not imposed on the sale of tangible personal property to the beverage distributor; rather it is imposed on the beverage distributor upon the transfer of the container to a dealer or consumer. Therefore, the CRV is not included in the “sales price” of tangible personal property sold to the distributor. As such, the CRV is not a component of the “cost” upon which the use tax is computed to be due for such purchases should the distributor self-consume the tangible personal property.

Once the CRV is imposed, whether by sale, donation or other transfer of the tangible personal property from the beverage distributor to a third party, the CRV is thereafter included in the “sales price” of the property. Therefore the CRV becomes a component of the cost upon which the use tax is computed when the property is self-consumed by, or transferred to, the third party purchaser. 7/7/03. (2004–1).

195.0160 Canning Service. The customer places fruit or other commodity in a can which then goes through a processing line and through a sealing machine.

The customer pays a charge for the can and the canning operation. The operation constitutes a “processing” under section 6006(c), and this is a “sale,” and the cans containing the customer’s commodity are regarded as being sold with the contents, exempt under section 6364(b). 6/12/57.

195.0180 Cardboard. Cardboard which is imprinted and used as a nonreturnable container to which is stapled various food items in cellophane bags, is exempt as a nonreturnable container. The tax does not apply either to the sale of the cardboard or the printing charges. 3/21/56.

195.0200 Cardboard Cartons Used to Ship Oil Cans. An oil company purchases cardboard cartons which it ships to a can manufacturer. The can manufacturer, who sells empty cans to the oil company, places the cans in the cartons and delivers the cans and cartons to the oil company’s refinery. At the refinery, the cans are filled with oil, replaced in the cartons and sold together with the cartons. The purchase of the cartons is exempt. 3/4/68.

195.0220 Cartons, Sale of to retailer used by him before use as nonreturnable containers is taxable. 3/26/51.

195.0240 Cartons, sales to consumers for use in quick freezing food products are not exempt from the tax. 8/31/50.

195.0245 Cash Redemption Value (Recycling Fee). The Cash Redemption Value (CRV) fee applies to nonrefillable containers such as those used for beverages. The CRV is imposed upon the wholesaler, who passes the cost on to the retailer, who passes the cost on to the purchaser of the beverage. Therefore, the CRV amount is an expense to the retailer and a part of the “gross receipts” collected from its customer.

The CRV law requires the retailers to separately state the CRV amount in advertising and on self-pricing, and retailers are permitted (but not required) to add the amount as a separate amount at the cash register. The CRV amount is not a true deposit for sales and use tax purposes because the CRV amount is not returned by the retailer to the customer, but is recovered from a third party at the recycling center. There is no exclusion for the CRV amount from the measure subject to sales or use tax, even though those amounts may be itemized to the customer and the amount is therefore included in the measure of tax. 7/10/96.

195.0250 Celluloid Tapes and Reels as Containers. In manufacturing printed circuit boards, integrated circuits and other components placed on the board are placed between two layers of celluloid tape and wound around a reel. The placement machinery then separates the two layers of celluloid tape and places the

components on the board at the desired location. The celluloid tapes are discarded. The reels may be recycled or scrapped.

When the entire package of the celluloid tapes and reels are purchased together with the components from the supplier of the components in a completed form, the celluloid tapes and reels are containers and the package may be purchased by the manufacturer of the circuit boards for resale. However, when the components are purchased from one supplier and the manufacturer separately purchases the celluloid tapes and reels, the manufacturer is the consumer of the tapes and reels and may not purchase them for resale. Further, if the insertion of the components into the celluloid tape and the mounting of the reels is sub-contracted to a third party, the charges represent fabrication of a manufacturing aid and as such are subject to tax.

If the manufacturer retains title to the tapes and reels, a separate charge for mounting the integrated circuits on the reels and tapes to their customers is not taxable if the circuit boards are sold for resale. If the circuit boards are sold at retail, such charges are includible in the taxable gross receipts. 8/30/93.

195.0260 Clips Used in Packaging Poultry. Clips which are purchased by a poultry processor for attachment to processed poultry and sold with the packaged poultry, qualify as “nonreturnable containers” under section 6364. 12/11/64.

195.0280 Clothes Hangers. Hangers used to display suits and coats prior to sale, which are sold to consumers together with the suits and coats, are nontaxable containers under section 6364. 4/9/65.

195.0300 Coat Hangers. Men’s suit hangers are containers within the meaning of section 6364. Retailers of men’s suits who purchase hangers for resale by giving a resale certificate are not subject to tax because of incidental use in transporting the suits within the store and displaying them on racks prior to the sale of the suits with the hangers. Use of items as containers generally includes incidental uses of transportation and display, which are not “intermediate and complete use” found to have existed by the court in *Safeway Stores v. State Board of Equalization*, 148 Cal.App.2d 299. 9/3/64.

195.0307 Computer Container. The contract of a company selling computers provides the following:

- (1) purchase price of the equipment is F.O.B. at the company’s place of business,
- (2) charges for transportation, presumably from the company’s place of business, are to be paid by the purchaser, and
- (3) title to the equipment passes to the purchaser on the installation date.

The purchaser is free to dispose of the containers in which the company ships the computers. The company’s employees install and test the equipment at the customer’s location. Assuming the company makes no use of containers except as nonreturnable containers in which to deliver equipment pursuant to the contract described above, with title to the container passing to the customer with the equipment, the sale of the containers to the company is exempt from sales tax. 4/3/89.

195.0310 Containers for Printed Sales Messages. A retailer of printed sales messages contracts with a distributor to deliver the printed sales messages on the retailer's behalf. The printed sales messages are delivered to the distributor in nonreturnable shipping containers. Since the retailer purchases the containers solely to transport the specially-ordered printed sales messages, the retailer sells "the contents together with the container" for purposes of section 6364(b). 1/17/95.

195.0311 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).

195.0312 Containers Used in Handling and Testing Activities. ATO-5 carrier and an integrated circuit device (I.C.) go through various steps in a manufacturing area including:

- (1) An I.C. is put into a TO-5 carrier after the I.C. comes from the manufacturing area.
- (2) The I.C. and carrier go through an electrical test. The I.C. is removed from the carrier, and the I.C. is plugged into a burn in board for burn in.
- (3) The carriers are put into a box and taken to another table where the I.C.'s in the burn in board come out of burn in. The I.C. is removed from the burn in board and put into a TO-5 carrier of the same type, although probably not the same carrier as before the burn in step.
- (4) I.C. and carrier go through another electrical test. The I.C.'s are marked while in the carrier, and the I.C.'s with the carriers are put into an oven to dry the ink from the marking procedure.
- (5) I.C. and carrier are packed in a poly bag and shipped out to the customer. Under the facts as described, the use of the containers in the handling and testing activities do not amount to a substantial use where the containers are ultimately used as nonreturnable shipping containers for the I.C.'s. However, this would not be true where the TO-5 carriers are used to ship a different type of I.C. than that which was tested in the container. 2/29/80.

195.0320 Corrugated Food Containers. Sales of corrugated containers for shipping food are treated as nonreturnable containers when such containers are sold by the purchaser along with the contents, no deposit is charged, and title is not retained. Such exempt status is not changed even though some of the containers might be repurchased or amounts paid as "finders fee" for the return of such containers. 4/2/64.

(Note: Statutory change to section 6364, operative April 1, 2000, re food containers.)
(Am. 2000-2).

195.0330 **Cotton Ginnings.** Tax does not apply to receipts from sales of bags sold to persons who gin cotton to be sold, whether such persons are commercial cotton ginnings who gin cotton furnished by growers, or whether such persons are themselves the owners of the cotton. The bags are nonreturnable containers within the meaning of Sales and Use Tax Regulation 1589. This interpretation is consistent with the interpretation in Annotation 195.0060 regarding ties used in baling hay. 4/19/89.

195.0340 **Counter Display Cards.** Counter display cards primarily for advertising and display purposes, their use in shipping articles being merely incidental to such primary use, are not exempt as "containers." 2/4/53.

195.0344 **Customary Usage.** If a particular type of container is customarily returned by the buyer for reuse, that type of container will be regarded as returnable, even though not all are returned. If a particular type of container is customarily not returned by the buyer for reuse, that type of container will be regarded as nonreturnable even though some are in fact returned by the buyer. A returnable container does not necessarily have to be returned to the original seller in order for it to be classified as returnable. 10/14/82.

195.0347 **Deposits on Nonreturnable Containers.** A firm engaged in business in a national park charges a five cent "deposit" on containers such as soda or beer cans. The "deposit" is required by the federal government to prevent littering in the national park. If the customer returns the container, the five cents are refunded but the container is not refilled. Rather, it is crushed and recycled.

The containers remain nonreturnable containers and, accordingly, the five cents are not a "deposit" within the meaning of Regulation 1589. The five cent fee is part of the gross receipts from the sale of the beverages. 12/6/82.

(Note: Opinion not related to redemption or recycling values pursuant to division 12.1, commencing with section 14500 of the Public Resources Code.)

195.0350 **Easter Baskets.** Easter baskets are to be regarded as exempt nonreturnable containers provided that the value of the containers represents one-half or less of the retail price charged for the container and the exempt food product within it. In such a case no tax would be due on the sale of the Easter basket and the food product within it. 3/21/72. 195.0380 **Egg Cartons** normally constitute nonreturnable containers. 3/8/54.

195.0400 **Fiberboard Sheets** used to cover milk bottles or cartons sold in cases to retailers and discarded upon delivery are regarded as nonreturnable containers sold with contents. 4/18/50.

195.0440 **Ham Bags Sold to Meat Packers.** The primary use of the ham bag is to hold the ham during the curing process. At some time between the end of the curing process and the sale of the ham to the ultimate consumer, the ham bag is removed. If the bag is not removed until after the ham is sold by the meat packer (whether the sale by him is to a consumer, retailer, wholesaler or other person), the use of the ham bag by the meat packer falls within the nonreturnable container

exemption. However, if the meat packer removes the bag before selling the ham, he does not come within the exemption and the sale to him of the bags is subject to tax.

If the meat packer does not know how he will handle a particular size bag, either of two procedures may be used. The meat packer may purchase ex tax under a resale certificate . . . and report on Line 2 of his own sales and use tax return the cost price of any bags of which he may make a taxable use. Or, the meat packer may purchase tax paid and take a deduction on his own return under the heading "Tax-Paid Purchases Resold" . . . for the cost price of bags which he sells with ham. 11/25/52.

195.0460 "**Handflats.**" A paint manufacturer ships gallon-cans of paint in cardboard "handflats" to its wholesalers and retailers. "Handflats" are essentially uncovered cardboard trays. When paint is sold by retailers, the cans of paint are delivered to customers with the handflats. The handflats are exempt from sales tax as nonreturnable containers. 1/9/70.

195.0465 **Handle for Plastic Grocery Bags.** Plastic handles which lock the loops of the common plastic grocery bags qualify as containers because they became part of the plastic bag which is a container. There is no charge to the customer for the handles and they are not "returned" for purposes for reuse. Thus, the sales of these plastic handles to grocers/retailers qualify as exempt sales of nonreturnable containers because the handles are sold without the contents to persons who place the contents in the container and sell the contents together with the container. 10/16/96.

195.0480 **Hop cloth** used in packaging hops would be considered a nonreturnable container if it is the custom of the trade not to return the hop cloth to the packers by their customers for reuse, and purchases thereof by a packer would be exempt from both sales and use taxes. 9/30/54.

195.0500 **Ice Cream Cartons** purchased for use in retail outlets of purchaser, not resold with ice cream, do not qualify as exempt non-returnable containers. 11/18/55.

195.0508 **Intervening Use.** A manufacturer of dehydrated food products purchases fiber drums and places dehydrated food products inside. The drums together with the contents are shipped to a distribution center. Ordinarily, the drums together with the contents are shipped from the distribution center to the customers. However, in some cases, the customer wants the product in a container of a different size and shape. In this case, the product is removed from the fiber drum and repackaged in a container desired by the customer. The fiber drum is returned to the manufacturing plant for refilling and subsequent distribution.

The use of the fiber drums to transport goods from the manufacturing plant to the distribution center and the subsequent removal of the product from the drums constitutes a use and tax is due on the purchase price of any drum so used subsequent sale of the drum together with the contents does not affect the tax liability incurred by the above-described intervening use. 8/22/90. (Note: Statutory change to section 6364, operative April 1, 2000, re food containers.) (Am. 2000-2).

195.0520 **Lumber for Packing Hops.** If lumber is used to make crates for exported hops it becomes a nonreturnable container if resold together with contents and is exempt from tax. If, however, the lumber is used as car strips or for bracing the packages of hops while in transit, it is not exempt. 4/16/57.

195.0540 **Meat Skewers.** Sales of meat skewers which are inserted in meat carcasses and remain in the carcasses when sold are exempt from tax as sales of nonreturnable container material for resale. 12/2/59.

195.0548 **Media Mix.** A company who is engaged in the business of growing and selling plants grows all of its plants from cuttings. Most of the cuttings are “stuck” into growing beds which are trenches containing a mixture of redwood sawdust, peat moss, and perlite (referred to as “media” or “media mix.”) The ingredients of the media are purchased ex-tax under resale certificates. The media is necessary to provide support for the cuttings so that the roots will grow and also promotes good drainage, but does not supply nutrients or heat to the cuttings. All nutrients and heat to help growth is added separately. When plants are removed from the growing beds to prepare them for shipment, about 1/3 of the media-mix remains attached to the roots of the plants and serves to protect the roots during shipment. The cuttings for some types of plants are stuck in trays rather than growing beds. These trays are filled with the same type of media as the growing beds. When the cuttings are rooted, the entire tray including all the media is shipped to the customer.

The media mix is used as a growing or rooting media for cuttings and plants. This use occurs prior to any resale of the media to the customers and also prior to any use of the media as shipping material. The company is liable for the use tax on all purchases of media mix under these circumstances. 6/12/89.

195.0560 **Metal Cans,** sold to nurseries, where the nurseries place plants in such containers, plants growing therein, no other use made of cans, plants remaining in cans until sold, and containers sold along with plants, original sale is regarded as an exempt sale of non-returnable containers. However, tax would apply if cans served otherwise than as mere container. For example, sales of whiskey barrels holding whiskey during aging are taxable. 11/5/52.

195.0580 **Metal Drums.** The stenciling on 55-gallon drums that the drums are the property of the distributing corporation does not invalidate their exempt status as nonreturnable containers unless over 50 percent of the drums are actually returned directly to the taxpayer. 5/9/68.

195.0600 **Metal Strapping** used to bind lumber to be sold and the metal guards placed under the straps to protect the edges of the lumber are considered nonreturnable containers which may be purchased ex-tax. 6/28/54; 7/17/62.

195.0620 **Milk Dispensing Tubes and Seals.** Milk dispensing tubes and seals used with retail bulk sales of milk and attached to milk cans furnished by a dairy to a restaurant, are non returnable container materials and may be purchased ex-tax by the dairy. The milk can itself is, a returnable container. 9/12/55.

195.0632 **Newsprint Used as Packing Material.** A taxpayer used newsprint as filler in boxes used for shipping its products. The newsprint is regarded as being sold with the products. It may be purchased for resale. 11/19/93.

195.0640 **“Nitrogen Blanketing.”** Nitrogen used in a process to prevent oxidation of vegetable oil shipped in tank cars, is not a container within the meaning of section 6364. The sale of nitrogen purged into bulk tank loads of vegetable oil is not a sale for resale but a retail sale to the purchaser of the bulk tank load of oil. 4/20/65.

195.0650 **Nonreturnable Type Containers.** Company A sells nonreturnable containers to Company C. Company B sells dishes to C. C directs A to deliver the nonreturnable containers to B in California, who packs the dishes (sold to C) into the containers and ships them to C out of state. Company A’s sale of the containers will be nontaxable only if C resells the dishes, and does so in the very containers purchased from A, without C’s making any other use of the containers. If C does not resell the dishes, A’s sale of the containers is subject to sales tax. If C resells the dishes but unpacks them from the containers purchased from A and repacks them into other containers (or does not repack them in any containers), A’s sale of containers to C is subject to sales tax. 10/2/89.

195.0680 **Outer Envelopes.** Outer envelopes ultimately used in delivering photographic prints to retail outlets qualify as exempt nonreturnable containers. Where, however, such outer envelopes are used in shipping exposed films and the developed film to the retailer without enclosing any prints, a taxable use occurs and the envelopes are consumed by the user and subject to tax. 2/24/55.

[195.0705](#) **Packaging Material.** A common carrier purchases various types of nonreturnable packaging materials including, but not limited to, boxes, envelopes, tubes, way bills and sealing tape. These materials, furnished to customers at no charge, are purchased and stored for less than 90 days in California warehouses. The customers receiving these supplies are located in several western states, including California.

The sale of these materials is not exempt from tax under Regulation 1589. The carrier does not sell the contents together with the container. The carrier also does not sell the containers to persons who place the contents in the containers and then sell them both. The carrier is consuming the materials in the conduct of its business. Sales or use tax applies to the carrier’s purchase or use of these materials unless some other exemption applies.

In a use tax situation, when the carrier supplies the materials to its customers and title passes to the customers in California, the carrier has consumed the property in California and the use tax applies even if the customer’s use is outside California. However, if the carrier transfers the materials to another state for use there, section 6009.1 provides for exclusion from use tax.

If the materials are purchased in a sales tax transaction, the subsequent use in another state does not give rise to an exemption. Section 6009.1 applies only to use tax transactions. 8/21/90.

195.0706 Packaging Material. A taxpayer packages merchandise for a client who sells the packaged merchandise to its customers. After the taxpayer packages the merchandise, the packaged merchandise is returned to the client who ships the packaged merchandise to their customers. The packaging materials purchased by the taxpayer are nonreturnable containers.

Sales tax does not apply to the sales of nonreturnable containers sold without the contents to persons who place tangible personal property in the containers for subsequent sale, regardless of whether such persons are the owners of the tangible personal property placed in the containers. Accordingly, the sale of such nonreturnable containers to the taxpayer who places its client's merchandise in the containers for subsequent sale by the client is not subject to sales or use tax. 3/26/96.

195.0707 Packaging Material. A taxpayer sells the following packaging supplies to a customer who manufactures a product for sale via mail order:

- Plastic Bags
- Peanuts (Styrofoam)
- Box Carton Sealing Tape
- Packing List Envelope Strapping
- “Fragile” and “This Side Up” Labels
- Stretch Film

The sale of plastic bags, boxes, carton sealing tape, and stretch film to purchasers who place the contents in the containers and sell the contents together with the containers are exempt sales of nonreturnable containers. The sales of the Styrofoam peanuts, strapping, “fragile” and “this side up” labels to become a part of nonreturnable containers are also exempt. However, packing list envelopes which are affixed to the outside of the box and the invoices put inside are not nonreturnable containers of the product sold. Thus, the sales of the packing list envelopes to customers in this state are for the customer's use, and the sales are subject to sales tax. 12/2/96.

195.0720 Pallets. Pallets which are resold to customers of brick along with the brick and are nonreturnable may be purchased ex-tax as nonreturnable containers. This is true only if such pallets are not customarily returned by the brick customers for reuse. 6/27/56.

195.0725 Pallets. A retailer asks whether the sales of pallets to a farmer are subject to sales tax. The farmer states that he/she sells food products on the pallets to various wholesalers and that the pallets are never returned.

The term “container” includes articles on which tangible personal property is placed for shipment, and specifically includes pallets. Since the farmer states that the pallets are not returned, the pallets are considered to be non returnable containers. Assuming the farmer does not use the pallets except to place his product on them and sells the pallet together with the product, the sale of the pallets would be exempt from sales tax. If the retailer takes a timely and valid

exemption certificate in good faith, the retailer will not owe sales tax on the transaction to which it relates. 7/14/92.

(Note: Statutory change to section 6364, operative April 1, 2000, re food containers.) (Am. 2000-2).

195.0740 Pallets. Pallets used to support clay products and discarded after reaching the final destination qualify for exemption as “nonreturnable containers.” 12/12/60.

195.0745 Pallets Sold to a Common Carrier. A blanket certificate of exemption issued by a carrier for pallets is not sufficient to relieve the seller of liability for tax. If the sale meets the requirements of the exemption for sales to common carriers (section 6385 and Regulation 1621), the seller must obtain and retain a timely exemption certificate which is substantially in the same form as required by Regulation 1621 and a bill of lading or copy thereof which meets the requirements of this regulation.

If the pallets are nonreturnable containers and the carrier is claiming that it is filling the pallets with contents which it sells, the seller must obtain an exemption certificate in accordance with Regulation 1667. 3/24/95.

195.0760 Paper Bags and Boxes. Paper bags and cardboard boxes sold to restaurants for the use of their patrons in taking home food remaining at the conclusion of a meal are nonreturnable containers exempt from tax. 7/29/55.

195.0766 Paper Bags and Cleaning Supplies Withdrawn from Inventory. An operator of a grocery store purchases paper bags, wrapping paper, cleaning supplies, and office supplies for resale and then withdraws the items from resale inventory for use in its grocery store operations.

The sale and use of nonreturnable containers such as bags, wrapping paper, boxes, tapes, etc., are exempt from sales and use tax when those items are sold to a person who places the contents in the container and sells the content along with the container. Therefore, if the operator uses the paper bags and wrapping paper in this manner, such use is exempt from tax. However, the operator’s use of other items withdrawn from resale inventory, e.g., cleaning and office supplies, is subject to use tax measured by the purchase price of those items. 8/6/96.

195.0780 Paper Cups. Used in dispensing soft drinks in theatre lobby are nonreturnable containers. 11/30/51.

195.0800 Paper. To be wrapped around cable and sold with cable is nonreturnable container. 3/8/50.

195.0820 Parcel Handles. Wooden parcel handles and plastic strips used as handles for milk packages, if not returned by the customer and no additional charge is made therefor by the seller, are exempt as sales of nonreturnable container materials. 12/24/53.

195.0840 Peat Moss. Where peat moss containing worm food is used for packing red worms in containers, its sale to the user is exempt as being a packing material sold along with the worms. 2/3/60.

[195.0860](#) **Peat Moss Used in Shipping Plants.** Peat moss sold to growers of tomato plants for the sole use of keeping such plants moist in shipment, constitutes container material exempt from tax.

Sale of peat moss to nurseries for use in growing beds is, however, subject to tax. 11/17/53.

195.0867 **Plastic Boxes and Carriers—Photoplate Manufacturing.** A photoplate manufacturer places in-process glass plates in boxes and carriers after the plates have been chromed. The plates are double spaced to avoid contaminants. The plates are inspected and substandard plates are eliminated. The remaining plates are then single-spaced, the surplus boxes and carriers are returned for cleaning and are later used to ship plates to the customers. The acceptable plates, which are still inside the boxes and carriers, are then further processed, inspected, placed in plastic bags, and shipped to customers.

The use of the nonreturnable containers (boxes and carriers) as temporary receptacles and as containers during the processing does not result in a use tax liability. The intervening use is not of sufficient consequences to deny the exemption set forth in section 6364(a). 8/27/84.

195.0870 **Plastic Film for Open Sides of Mobile Homes.** Tax does not apply to sales of plastic film to mobile home manufacturers for covering open sides of double width mobile homes during shipment to a dealer. In such cases the plastic film qualifies as a “nonreturnable container”. Where the manufacturer sells directly to the consumer and delivers, assembles, and installs the home, the film is removed by the manufacturer and is not sold with the home. Sales of the film to the manufacturer would in that instance be subject to tax. 8/25/75.

195.0880 **Polyethylene Bags.** Polyethylene bags used only once for the protection of plants during shipment, which are sold to customers together with their contents and are nonreturnable, are exempt from tax as nonreturnable containers. 2/23/61.

195.0900 **Polyethylene Tapes Encasing Seeds to be Planted.** Polyethylene tape encasements for vegetable seeds, which facilitate uniform planting, are exempt from the sales tax as nonreturnable containers of exempt contents. 5/9/69.

195.0920 **Print Feed Bags.** Sales to persons for use as materials for dresses are subject to the tax. 6/13/50.

[195.0925](#) **Promotional Displays.** A manufacturer and wholesaler of health and beauty products promotes various products by sending its customers these products, in trial or sample sizes, in special packages referred to as “packers.” Packers come in various sizes. During promotional periods, the packers are used to fill all orders and reorders for the promoted items until the supply of the packers is depleted. The packers contain 12 to 18 promoted products which are placed in paper, cardboard, or plastic trays inside the packer and are designed to sit on a counter or shelf. The packers, which hold the trial size products, are constructed so that they can be removed from the corrugated shipping boxes and sit on a counter in a display position.

The trial or sample size products are sold to the customers, not given away. In some of the larger packers, the unit includes a header board, made of colorful

sturdy cardboard showing a picture of the product, a message advertising the product, and a sheet of assembly instructions. The floor display contains a cardboard base, which can be folded and assembled to form a base for the tray of products. The manufacturer believes the packers are shipping cartons, designed and engineered to protect and house the product during shipment.

The packers are designed with the display of the product in mind. The retailer can easily open a packer and set it on a counter. While the packer does have a certain amount of utility as a shipping container, that was not the purpose for which it was designed. The packer, including the trays, stand, headers and instructional materials are considered to be marketing aids, and the manufacturer is the consumer of these items. The corrugated liner in which the packers are shipped are nonreturnable shipping containers. 5/23/90.

195.0933 Repairing Returnable Containers to be Used as Nonreturnable Containers.

An oil company has repairs made to returnable containers (drums) after a number of uses. The repair process involves the furnishing of parts and materials as to which the repairman is a retailer under Regulation 1546. After the drums are repaired, the oil company intends to use the drums as nonreturnable containers. Title to the drums remains with the oil company at all times until they are ultimately sold as nonreturnable containers. Under the above conditions, the repairman's charges for parts and material are exempt under Regulation 1589 because to the extent that new materials are added to the containers, the sales qualify as sales of nonreturnable containers sold without the contents to persons who place the contents in the container and sell the contents together with the container. The term "containers" as defined by Regulation 1589 includes materials from which such containers are manufactured. 2/22/93.

195.0940 Rubber Bands. Rubber bands sold for use as containers for items to be sold are exempt nonreturnable containers. However, if the rubber bands are used by the purchaser as containers for give-away items, the sale thereof does not qualify for the exemption. 8/30/66.

195.0960 Rubber Bands. Sale of rubber bands to newspaper sellers to be delivered to the buyers along with the newspapers for which the bands serve as containers, are exempt from the sales tax as sales of nonreturnable containers. 3/4/60.

195.0980 Rubber Gaskets. Rubber gaskets constituting component parts of pails and covers utilized for the packaging of paint or similar products are nonreturnable containers or nonreturnable container material exempt from tax. The replacement of such gaskets is likewise exempt from tax. 2/11/55.

195.0990 Sale of Containers Purchased from Recycler. A recycling company contracts with representatives to purchase, process, and store Polyethylene Terephthalate (PET) beverage containers as defined by the California Beverage Container Recycling and Litter Reduction Act. The representatives purchase PET containers from recyclers on behalf of the company, which holds title to the purchased containers. The company sells the PET bottles to an end user.

Since the bottles are sold by the company to end users and not to persons who place the contents in the container and sell the contents together with the container, the sales are subject to sales tax. 2/20/92.

[195.1000](#) **Separately Stated Charge for Container.** Tax applies to entire charge when a nonreturnable container is sold along with nonexempt contents even if charge for container is separately stated. 3/19/52.

195.1020 **Shipping Materials.** String, gummed tape, wrapping paper, and shipping cartons which are used in wrapping and shipping flowers to retail florists, are exempt as nonreturnable containers. 3/27/53.

195.1028 **Single Dose Vaccine Container.** A manufacturer of single dose containers sells these containers to a physician who in turn fills them with a vaccine. The physician fills the empty single dosage containers (presumably purchased under a resale certificate) with vaccine and uses the filled containers to administer the vaccine to a patient. The physician then discards the empty containers.

It would be improper for the manufacturer to accept a resale certificate from the physician, given the intended use to be made of the container by the physician. The sale of the container would not be exempt because the physician does not sell the contents together with the container, the containers are not “returnable containers” resold for refilling, and the containers are not sold by the manufacturer with contents exempt from the tax. It is also doubtful that the single dose containers would even qualify as “containers” within the meaning of that term as it is used in the regulation since the term is limited to “articles in or on which tangible personal property is placed for shipment or delivery.” The physician uses the single dose container neither to ship nor to deliver the vaccine administered by him. The use tax would be applicable if the physician had purchased the single dose containers under a resale certificate. 12/10/70.

195.1040 **“Slush.”** Containers for “slush” which is similar to a snow-cone, are nonreturnable. 6/8/62.

195.1060 **Soft Drink Cartons.** Sales tax does not apply with respect to cardboard cartons purchased by a soft drink bottler for the purpose of containing 6 or 12 bottles of soft drinks, which cartons are filled by the bottler and sold to dealers along with the beverage, there being no charge or deposit made on account of the cartons.

While some of these cartons may be returned, there is no understanding that they will be, and title to the cartons is not retained by the bottler. 2/13/53.

195.1080 **Staples.** Staples sold to produce concerns for use in stapling cartons in which lettuce is packed become part of the container, and if such cartons are “nonreturnable containers,” the sale of the staples are exempt from sales tax. 5/21/53.

(Note: Statutory change to section 6364, operative April 1, 2000, re food containers.) (Am. 2000–2).

[195.1086](#) **Strapping for Bundling Newspaper.** A newspaper publisher furnishes newspapers in strapped bundles to independent contractors (carriers) who deliver newspapers to subscribers. Since, pursuant to section 6015(c), the publisher is regarded as the retailer of the newspapers, and since the strapping is not delivered

to subscribers with the newspapers, the strapping is not regarded as being resold. Thus, sales of strapping to the publisher are taxable. 2/9/94.

- 195.1100 Steel Strapping as Nonreturnable Container.** Where steel strapping is utilized for fastening manufactured pipe into bundles for shipping purposes rather than as bracing materials, the use thereof constitutes a nonreturnable container and exempt from tax. 6/18/53.
- 195.1120 **Storage.** The sale of tanks used by the purchaser for the storage of molasses does not constitute an exempt sale of a container as the purchaser neither sells the contents nor the container. 2/25/54.
- 195.1130 **Storage.** Sales of used steel drums to a juice processor who uses them to store juice are not sales of containers exempt from sales tax because the drums are neither sold nor used as articles in which juice is placed for shipment or delivery. The use of articles to store products is a consumptive use that requires a seller to pay sales tax or to collect sales tax reimbursement or use tax from his purchasers. 4/28/70.
- 195.1140 **Tumblers with Cottage Cheese.** An aluminum tumbler with cottage cheese inside should be regarded as an exempt non-returnable container unless its value represents more than half of the total retail price of both items. If its value is more than half of that price, it is considered purchased as more than simply a container for the cottage cheese and sales tax applies to the total retail price less the fair retail value of the cottage cheese. 12/28/78.
- 195.1180 **Value of Container.** The mere fact that food product packed in glass containers sells at a price in excess of the price when packed in paper containers, does not prevent the application of the container exemption set forth in section 6364 to the glass containers. 9/13/50.
- 195.1200 **Vegetable Parchment.** Sales of sheets of vegetable parchment for use as insertions between the lid and can of large milk cans as a protective collar or gasket are exempt from tax as nonreturnable containers. 7/23/56.
- 195.1208 Visistat Skin Staplers.** This product is sold pre-filled and is not reusable. Therefore, the cartridge containing the staplers constitutes a container sold with contents which are medicines and the sales of the pre-loaded staplers are exempt from sales and use tax. (Regulations 1591 and 1589(b)(1)(C).) 9/26/95.
- 195.1220 **Wax Paper.** Wax paper and wax misprint sold to a newspaper for use by its carriers in wrapping newspapers for protective purposes when delivering such newspapers in wet weather, constitute nonreturnable containers exempt from tax. 7/18/56.
- 195.1240 **Wax Paper.** Wax tissue paper sold to bakers and in which baked goods are placed before being placed in bags or boxes in which the goods are sold, is properly regarded as an exempt nonreturnable container. 11/9/56.
- 195.1280 **Wrapping for Newspapers.** Rubber bands and wax paper sold for use in wrapping newspapers for delivery to subscribers are exempt from sales tax as sales of nonreturnable containers. 8/31/55.

195.1330 **Wrapping Paper Sold to Meat Processors and Locker Plants.** Meat processors and operators of locker plants who carve or dress meat, or clean and pick game birds, for consumption by customers who furnish the meat or the birds, are making processing “sales” under section 6006(b), which are exempt under section 6359. The purchase and sale of paper used to wrap the product for delivery to the customer are exempt under section 6364. 5/6/76.

195.1340 **Wrapping Paper Sold to Operator of Frozen Food Lockers.** The sales tax applies to sales to operators of frozen food lockers who use the materials to wrap meat or other foods not sold by the operators to the customer, in the same manner that it applies with respect to the sale, for example, of wrapping paper to a laundry which uses the wrapping paper to wrap up material that has been laundered for delivery to the owners thereof. On the other hand, the tax does not apply to sales of containers and wrapping materials to operators who will place meat or other food products therein, selling the products together with the containers.

Assuming that an operator cannot segregate at the time of purchase the container material that will be used to wrap property belonging to the customer and to wrap property for sale to the customer, he may buy all of the container material ex tax for resale and return the tax to the state measured by the purchase price of that portion of the container material used other than to wrap products to be sold to the customer. If he buys all of the container material on a tax-paid basis, he may deduct on his tax returns the cost price of that container material used to wrap food to be sold to the customer. 7/5/50.

195.1360 **“Zero-Pak.”** “Zero-Pak” is similar to dry ice which is packed with ice cream products in cardboard containers to delay melting. This does not constitute wrapping or packing material and is therefore not a container. 7/9/62.

(b) RETURNABLE CONTAINERS

195.1400 **Beer Kegs—Filling as First Use.** A foreign manufacturer of beer fills kegs with beer at its overseas brewery, sells the filled kegs to an importer who sells them to a distributor who resells the kegs of beer to customers in this state. When the kegs are empty, they are returned to the brewery for refilling. Inasmuch as the kegs are returnable containers and the filling of such containers constitutes the first use thereof, and this use does not occur in this state, the containers are not subject to the California use tax, notwithstanding the subsequent storage or use of the containers in this state. 8/10/67.

[195.1440](#) **Cargo Containers First Used in California.** Large cargo vans purchased out of state by a steamship company and shipped empty to California are subject to use tax when placed in commercial service even though they will be exclusively used in interstate and foreign commerce thereafter. The placing of these vans into commercial service is the first consumptive use made of them because they were brought empty into this state from Jersey City, New Jersey. The first consumptive use in California constitutes a taxable event. (*H. J. Heinz Co. v. State Board of Equalization*, 209 Cal.App.2d 1[25 Cal.Rptr. 685].) 5/25/65.

[195.1445](#) **Customary Usage.** If a particular type of container is customarily returned by the buyer for reuse, that type of container will be regarded as returnable, even

though not all are returned. If a particular type of container is customarily not returned by the buyer for reuse, that type of container will be regarded as nonreturnable even though some are in fact returned by the buyer. A returnable container does not necessarily have to be returned to the original seller in order for it to be classified as returnable. 10/14/82.

[195.1448](#) **Deposits.** A firm sells retaining walls and patio pavers. It charges \$15 for each pallet furnished with the merchandise. When the customer returns the pallet, the customer receives \$13.

The \$2 difference is part of gross receipts and is includable in the measure of tax on retail sales. Only the \$13 is regarded as a deposit on the returnable container. 2/25/94.

[195.1450](#) **Deposits Charged on Pallets.** A supplier sells bags of sand stacked on pallets to a retailer. The supplier charges the retailer a deposit for the pallets. The retailer, in turn, sells the bags of sand to its customer and also charges a deposit for the pallets. When the customer returns the pallets to the retailer, and the retailer returns the pallets to the supplier, their deposits are refunded.

The supplier is the consumer of the pallets, and tax applies to its purchase. The deposit charged by the supplier to the retailer and the deposit charged by the retailer to the customer are nontaxable. 4/2/90.

[195.1460](#) **Deposits on Containers.** Deposits on returnable containers are not considered taxable whether forfeited or not. 4/30/69. [195.1500](#) **Feed Bags.** Feed bags in which feed is delivered to customers and in most instances returned, should be treated as returnable containers not exempt from tax. 9/2/53.

[195.1517](#) **Gas Cylinders.** A gas manufacturer purchases or manufactures gas cylinders. These cylinders are filled with gas and sold to distributors. The distributors sell the gas in the cylinders to the customers taking refundable deposits on the cylinders. Empty cylinders that are returned to the distributors are sent back to the manufacturer for refilling.

The gas cylinders are returnable containers as defined in Regulation 1589(a). The gas manufacturer's first filling of the cylinders constitutes first use and, accordingly, the cylinders are subject to tax based on cost. 11/17/83.

[195.1520](#) **Gas Cylinders.** A welding supply company purchases new gas cylinders from a manufacturer. The welding supply company obtains filled cylinders from a gas company in exchange for the new and used empty cylinders, plus a contents charge. The welding supply company sells the filled cylinders to its customers, taking their empty cylinders in exchange. Since the new cylinders are not sold with contents to the welding supply company, nor resold to the welding company for refilling, the sale of such cylinders to the welding supply company is not within the exemption provided in section 6364. 9/23/65.

[195.1521](#) **Gas Cylinders and Storage Vessels.** Taxpayer purchases empty cylinders, fills them with gas and sells the contents to consumers and makes a "rental charge" in the form of a monthly fee for each cylinder delivered. Although the sale of the contents may be taxable, the charge for the cylinder is exempted by Regulation 1589(b)(1)(B) as a returnable container. The initial purchase of the empty

cylinders, however, is subject to sales tax if purchased in California. If the cylinders are purchased outside this state for use in this state, the purchase of the cylinder is subject to use tax. The periodic fee charged to the customers is not subject to tax.

For customers buying larger quantities of gas, the taxpayer delivers and installs large storage vessels at the customer's location. The customer pays a periodic rent for the vessels. As the vessels are delivered empty, they do not qualify as containers under Regulation 1589(b)(1)(B). The imposition of the tax on the acquisition/rental of the vessels is governed by Regulation 1660. 8/16/90.

195.1526 Leases of Pallets/Containers. A manufacturer leases pallets/ containers and pays rent to the lessor on a "per pallet/container day" basis. Manufactured items are secured to the pallets or, in the case of containers, the commodity is placed in the containers and the assembled pieces are sold to customers by the manufacturer as a one unit load. The manufacturer does not make a separate charge for the pallets/containers. The pallets/containers are not returned to the manufacturer by its customers; however, the lessor retrieves them on behalf of the manufacturer and reuses them.

The pallet/containers leased to the manufacturer constitute "returnable" containers since they must be returned to the lessor on the manufacturer's behalf in order to terminate the manufacturer's responsibilities with respect to the leased pallets and it is in the manufacturer's best interest that the pallets/containers be returned to the lessor as soon as possible. The fact that the manufacturer's customers do not return the pallets/containers to the manufacturer but rather the lessor retrieves the pallets/containers on behalf of the manufacturer is immaterial. Accordingly, the initial lease of new pallets/containers for first filling to the manufacturer would be subject to tax for the term of the lease. However, any subsequent leases of the same pallets/containers for refilling are not subject to tax. 1/2/98; 5/14/98. (M99-2).

195.1530 Leases of Returnable Containers. A lease of tangible personal property is regarded as one sale for the term of the lease. Where a lease is renewed, or if another lease is entered into, these leases are regarded as separate sales.

Thus, when a lease is of new returnable containers on which the rental receipts are subject to tax, the subsequent renewal of such a lease is a sale of returnable containers resold for refilling and therefore exempt from tax pursuant to Regulation 1589(b)(1)(B). For the lease of new returnable containers, tax applies to the total lease payments received under the terms of the lease and not only to that portion of the lease receipts which relate to the first filling of the new container.

When short term leases are renewed for new leases for longer periods, the tax application on the renewal would depend upon the circumstances surrounding the execution of the lease and the business reasons therefor. A resultant tax liability would depend upon the facts in each case. Thus, if a lessor entered into lease contracts of new returnable containers leased in a different form than acquired for three month periods and then renewed or re-leased the containers to the same parties for five-year periods, these transactions would be considered to be shams

and tax would be asserted on the rental receipts received during all or substantially all of both periods. On the other hand, if the lessor entered into lease contracts of the new returnable containers for five-year periods, and then renewed or re-leased the containers, tax would be asserted on the rental receipts received during the initial period only. 3/28/69.

[195.1531](#) **Lease of Returnable Containers.** A taxpayer leases returnable containers from a lessor who charges tax on the rentals. The taxpayer fills the containers with a product for resale which, when sold, is delivered in the containers. Since the lessor is charging tax on the lease receipts, it is clear that tax was not paid on the lessor's acquisition of the containers or that they are not being leased in the same form as acquired. Since the containers are "returnable containers," the lessor is correct in taxing the lease proceeds. 4/17/72.

[195.1540](#) **Motion Picture—Reels and Protective Cases.** Where a moving picture company in California purchased reels and protective cases from outside this state and placed film on the reels and into the protective cases, then stored them until distributed to recipients outside this state, the placing of film on the reels and into the protective cases and the subsequent storage was held to be a taxable use of the reels and protective cases. 7/28/65.

195.1560 **Pallets.** Wooden pallets purchased by a ceramics manufacturer for use in shipping ceramics to its customers, constitute returnable containers and sales for such use are subject to tax. 12/7/55.

[195.1561](#) **Pallets.** If more than fifty percent of the pallets used to deliver sod are returned to the sellers of the sod, those pallets are regarded as returnable containers even if the seller does not specifically retain title to the pallets and does not take a deposit for their return. 3/12/92. (Am. 2002–2).

[195.1562](#) **Pallets.** The purchase of empty pallets by trucking companies to give to their customers to replace loaded ones which they take from their customers constitutes returnable containers. Therefore, the sales of the pallets to the trucking companies for such purposes are subject to the sales tax. 5/10/96.

[195.1563](#) **Pallets—Bakery Transportation Racks.** Bakery transportation racks were developed to make the shipment, transportation and delivery of fresh baked products more efficient and effective. The racks hold freshly baked products and are used to deliver these products to distribution centers or retail outlets without damage. Racks of this kind are considered to be a specialized type of pallet functioning in a specialized industry. Therefore, bakery transportation racks are containers as defined in Regulation 1589 and qualify for the exemption from tax provided by section 6364. 1/14/02.

195.1580 **Pallets for Sacked Cement.** A retailer of building materials purchases sacked cement stacked on pallets. The retailer sells the sacked cement on pallets to construction contractors, making a separate charge for each pallet. When the contractors buy another pallet loaded with sacked cement, they return their empty pallets and are given credit therefor. Under such circumstances, the sales of pallets to the retailer by cement plants in this state are subject to sales tax, but the

use in this state of pallets purchased and first filled outside this state is not subject to use tax. 7/24/67; 8/18/67.

195.1590 Pallets Purchased Subsequent to Delivery. There is no exemption for sales of containers to persons who use the containers, not for shipping goods to others, but for internal purposes. Such containers cannot be purchased under a resale certificate. For example, a customer purchases bottled water for resale which is delivered on both new and used pallets. The taxpayer considers the pallets to be returnable containers and pays tax to his/her suppliers on the purchase price of the pallets. The customer informs the taxpayer that he/she wants to keep the pallets for the purpose of transferring merchandise among his/her various stores. The original transaction between the taxpayer and customer is not subject to tax in whole or in part. The containers were “returnable” containers and were properly taxed to the taxpayer. Subsequent to the original delivery, customer purchased the pallets. This was a retail sales transaction separate from the sale of the bottled water.

The taxpayer is not entitled to a tax-paid purchases resold deduction on the new pallets purchased tax-paid and sold under the described circumstances. The taxpayer used the pallets by filling the pallets prior to the time the pallets were sold to his customer. The pallets were purchased as returnable containers and were used as returnable containers and as such, taxable. 12/16/92.

(Note: Statutory change to section 6364, operative April 1, 2000, re food containers.) (Am. 2000-2).

195.1596 Reconditioned Oil Drums. Oil drums are reconditioned by replacing the tops, bottoms, and plugs of the drums. The drums are then thoroughly cleaned and repainted. After such reconditioning, the drums cannot be considered used. The sales of such reconditioned drums are considered to be sales of new returnable containers subject to tax and not sales of used returnable containers resold for refilling. 2/16/89.

195.1598 Reconditioning of Pallets. If the reconditioning of pallets involves merely adding a few nails where necessary, replacing an occasional board, and cleaning and repainting, the pallets are regarded as maintaining their status as used and their sales are sales of used returnable containers resold for refilling. 2/16/89.

195.1600 **“Re-Shipping Cartons”** sold to breweries along with glass bottles placed in such cartons are nonreturnable containers exempt from tax, notwithstanding the fact that the bottles in such containers are subject to tax as returnable containers. 8/25/54.

195.1605 Returnable Containers—Charge for Packing. A separately stated charge for packing merchandise into returnable containers (cylinders) sold at retail with the contents is related to the taxable sale of the contents rather than to the nontaxable sale of the returnable container. The packing charge is part of the gross receipts from the retail sale of the merchandise. 3/11/94.

195.1620 **Tanks.** The sale of tanks used by the purchaser for the storage of molasses does not constitute an exempt sale of a container as the purchaser neither sells the contents or the container. 2/25/54.

195.1640 Tanks Utilized as Containers for Transoceanic Shipment of Products.

Tanks designed for use as containers for transoceanic shipment of products are reusable containers subject to sales tax.

Delivery in California of such tanks to a purchaser who in turn leased them to governmental agencies and also fills them with products constitutes a taxable sale. Foreign commerce does not commence until after delivery and the aforesaid use by the purchaser in California. 3/31/53.

195.1660 Used Bottles. Sale or purchase of used bottles are exempt if sold or purchased for refilling. 3/8/50.

(c) LABELS

195.1680 Addressing Labels. Charges for an addressing service consisting of addressing stickers and affixing them to the mailing pieces are not taxable. 6/10/60.

195.1695 Advertising Labels. Labels which announce “Free Offer Enclosed,” “Free! With Purchase . . . ,” and “Buy 1 Get 1 Free” are considered advertising materials the sales of which are taxable pursuant to Regulation 1589(c)(1). The purpose of these labels is to apprise consumers of a free offer. Since these labels do not describe the contents nor instruct the consumer on the application or use of the product sold in conjunction with the manufacturer’s offers, the exemption provided under section 6364 does not apply to sales of these labels. 7/25/95.

195.1700 Advertising Matter. Tax applies to sale of enclosures primarily for advertising purposes. If, however, the enclosure is in the nature of directions, instructions, or information desired or needed by the consumer of the goods, the mere fact that advertising is also contained in the enclosure will not cause the tax to apply. 5/29/51.

195.1720 Advertising Matter. Circulars containing both advertising material and directions for use of four products of a manufacturer, enclosed in a box containing only one of such products, is clearly advertising as to the other products and as such, is used by the manufacturer and is subject to tax. 5/11/54.

195.1740 Attached to Goods Sold. The distinction between a taxable shipping tag and an exempt label turns primarily on the use by the vendor for his own purposes, rather than for the character of use or benefit of the customer. A shipping label does not describe the contents of the nonreturnable container nor relate to the product sold, whereas such cautionary labels as “fragile,” “glass—handle with care,” or “ inflammable” primarily benefit the ultimate purchaser and are considered as resold prior to use by the vendor. If the label is a shipping label, primarily for the benefit of the vendor, it is not considered sold with the product but the vendor is considered to be making a taxable use of it. If the label is descriptive of the contents of the container to which it is attached, it is regarded as being purchased by the vendor for resale with the product and his purchase is exempt as being purchased for resale. 7/7/69.

195.1760 Booklet. Small booklets attached by a string to the neck of a bottle and describing the contents of the bottle and the method of application or use, constitute labels exempt from tax. 8/26/55.

- 195.1780 **Combination Shipping Label and Directive Use Label** is taxable since it is regarded as used as shipping tag by vendor prior to use by customer. 7/21/52.
- 195.1800 **Direction Sheet.** A “direction sheet” or “package insert” which contains information relating to the labeling of prescription drugs and is placed in drug containers from which prescription drugs are dispensed do not constitute labels since they are not affixed to the product or the nonreturnable container and are not sold with the product to the ultimate consumer. The direction sheet is primarily for the use of the dispensing practitioner and for the manufacturer’s use in complying with federal regulations. The use tax is applicable to the manufacturer’s use of such labels in California. 4/11/69.
- 195.1820 **Fertilizer Analysis Tags.** The analysis tags required by law to be attached to a farmer’s bulk tank containing liquid fertilizer, and which are attached to the customers’ tanks after the liquid fertilizer sold is placed therein, may be regarded as purchased for resale by the seller of the liquid fertilizer, similar to the feed analysis tags and nameplates. 6/8/60.
- 195.1840 **“Fragile” labels.** Sales of “Fragile” or “handle with care” labels or stickers to persons who affix them to nonreturnable containers and resell them with the container and contents, are exempt. 4/22/59.
- 195.1860 **Identification Markings.** Ink which is applied to cans primarily for internal identification purposes is self-consumed by the cannery. Although the ink may remain on the can, the cannery makes an intermediate and complete use of it prior to resale. 3/5/65.
- 195.1880 **Identifying Tickets.** Sales of identifying tickets to manufacturer are taxable where they are used by the manufacturer to identify separate pieces for assembling purposes, and are customarily removed before sale. 2/21/51.
- 195.1900 **Instruction Leaflets** attached to containers of products are exempt provided they are for the benefit of the ultimate consumer rather than the retailer. 8/10/53.
- 195.1902 **Instructional Labels.** If labels containing instructions as to operation of equipment are sold to persons who attach them to equipment which is sold by the person, the sales are sales for resale. If the labels are sold to persons who attach them to equipment which they own and use, the sales are taxable retail sales. 5/25/94
- [195.1909](#) **Label vs. Shipping Tag.** The distinction between a nontaxable label and a taxable shipping tag turns primarily on whether the purchaser will use the item for her own purposes or for the use of the purchaser’s customer. Sales of blank labels can be made to other retailers for resale provided the purchaser does not use them as a price tag, shipping tag, or an advertising label. Sales of labels describing a product can also be made without tax such as “*keep refrigerated,*” and “*pesticide free.*” However, labels which merely contain the notation “*Thank You*” are taxable unless the purchaser will add to the label an instruction or description such as product weight or contents. 5/29/92.
- 195.1911 **Labels.** Sales of labels which instruct consumers on the use of a product are exempt if the labels are affixed to nonreturnable containers of property to be sold or to returnable containers of such property if a new label is affixed to the

container each time that it is refilled. If the labels are used in another manner, sales of the labels are taxable. 11/16/93.

195.1920 **Meat Labels.** Paper used in a meat labeling machine to reflect the weight of the package, the price of the item, the price per pound, and the cut and grade of the meat, constitutes an exempt label, and sales of the paper are not taxable. 9/27/55.

195.1926 **Neck Hangers.** Neck hangers are sold to purchasers who attach them to nonreturnable containers of property which is sold. They are, for example, placed on a champagne bottle describing the contents thereof or for other promotional purposes. The neck hangers in question fall into three categories:

(1) This neck hanger is a form which lists three charities, one of which a purchaser of a bottle of wine may choose. The winery will send a donation of two dollars to that charity.

(2) This is a neck hanger which is a pocket planner.

(3) This neck hanger consists of advertising printed matter.

These neck hangers do not describe the contents of the bottles nor do they instruct the application or use of the bottles' contents. Rather, each is either a charity designation form, a pocket planner, or an advertisement. Therefore, these neck hangers do not qualify as labels.

The category 3 neck hangers are brochures whose principal purposes is advertising or promoting the sale of the bottles upon which they are placed. Thus, they are printed sales messages but they do not qualify for exemption because the neck hanger is delivered to the purchaser, (the winery) who places them on the bottles before they are sold and delivered to the grocery stores. (Regulation 1541.5(b).) 07/02/96.

195.1929 **“Now 50% Less Fat” Label.** Sales of labels affixed to nonreturnable containers of food to be sold that state “Now 50% Less Fat” are exempt from sales and use tax. Such labels are regarded as describing the contents in the container. 3/26/96.

195.1935 **Packing Slip Envelopes.** Sales of packing list envelopes are not exempt as sales for resale since the envelope manufacturer's customers were the consumers of the envelopes. Labels and nameplates which qualify for exemption are those which identify the product, producer, describe the contents, or instruct in the application or use of the product and convey information concerning the product in the container. The function of the envelopes in question is not informational but is the same as that of a normal envelope used to enclose a packing list sent separately through the mails. 4/26/71.

195.1940 **Paint Samples.** A paint manufacturer was the consumer of color cards and color chips which it provided to retailers without charge to facilitate the sale of the manufacturer's paint products. The sales aids did not qualify as exempt labels because they were not intended to be affixed to property for sale. They did not constitute premium merchandise because they were not intended to be given as a premium for the purchase of other property. 7/6/67.

195.1980 **Paint Used to Recondition Returnable Containers.** Tax applies to the sale of paint used to recondition returnable oil and grease drums. The paint should not be regarded as a label affixed to a container each time it is refilled. However, new decals and paint used for stencilling may be properly regarded as labels placed each time the drums are filled. 11/8/51.

[195.2020](#) **Partial Exemption.** No partial exemption is available because part of label is purchased for resale. The entire article must be resold for the exemption to apply. 11/21/51.

195.2029 **Packing Material—Leased Equipment.** Leased equipment which is packaged by the lessor is delivered to the lessee's premises and unpacked and assembled by the lessor. The packing material is "sold" with leased property when tax on the lease is reported on the rental receipts basis. The lessor may properly issue a resale certificate. 2/10/82; 5/20/96.

195.2040 **Premium Offer Labels.** Tax applies to the sale of easily removed premium offer labels to be wrapped around the purchaser's already labeled product. 11/1/57.

195.2060 **Price Tags.** An item may be a price tag under Regulation 1589 even though it does not hang from a container but is glued thereto.

Where a label shows the weight of content and also the price, it is not primarily a price label. Likewise, where the label shows the trade name or any other description of the article and also the price, it is not primarily a price label.

A label is primarily a price label only when it can be said that wording on the label other than the price is merely incidental. 3/24/55.

[195.2067](#) **Promotional Labels.** A label is affixed to the product's individual box, the same color as the printing on the box, to make it look like part of the printing. The label states "Save \$5.00" and "\$24.50 value for \$19.50" and is placed on the box prior to covering the box with cellophane. The manufacturer believes this label is not a price tag but an informational sticker that becomes part of the product's individual packing and that the sticker is used merely to attract attention and show that the customers are paying less for the product.

The labels or stickers are considered to be "price tags." The labels or stickers do not describe the contents of the container or explain the benefits of the product to the consumer, but only contain information regarding selling price and money saved. A label is primarily a price tag when it can be said that the wording on the label, other than the price, is merely incidental. 5/23/90.

[195.2076](#) **Shipping Tag.** A multiple part form is used by the seller to describe the contents, quantity, and unit of measure being shipped. It also has a "sold to" and "shipped to" text area where the seller inputs the customer's name and address. One copy of the completed form is folded with the "ship to" address showing, inserted into a clear plastic envelope, and attached on the outside of the container (nonreturnable) and used like a shipping label. Another copy is retained by the seller as its accounts payable records and a third copy is used to accompany customs documents if the shipment is being sent overseas.

When a printed item is both a label and a shipping tag describing the product and the seller and showing the name and address of the consignee, the seller is considered to be using the item more as a shipping tag than as a label. Also, the additional copies for accounts payable records and to accompany customs documents, neither of which are affixed to the nonreturnable container, are not labels. Accordingly, the purchases of this three part packing slip used in the manner described are not exempt from the sales or use tax. 3/12/96.

195.2080 **Shipping Tags.** Where a printed item is both a label and a shipping tag, describing the product and the bottler, and in addition shows the name and address of the consignee, the bottler is using the label or tag for some purpose other than resale and the printer thereof makes a taxable retail sale. 3/16/55.

195.2100 **Stencil Ink** used in marking identification, trade name, size and serial number on products is an exempt label. 11/24/52.

195.2115 **UPC on Label.** A food packer purchases UPC labels and affixes them to food packages which are then resold to retailers who would use the information included in the UPC. When scanned by retailers, the UPC discloses the description of the product, identifies the distributor, lists the ingredients, and shows the weight of the contents. Since the information included in the UPC is for the benefit of the person purchasing the package that includes UPC labels, i.e., the retailer, the UPC qualifies as a label under Regulation 1589 and the sale of UPC to the food packer is not subject to tax. The sale of UPC to a retailer for the retailer's own benefit rather than the customer is subject to tax. 1/5/96; 4/13/98. (Am. M99-1).

195.2117 **Use Prior to Sale—Laboratory Labels.** A lighting manufacturer places an order with a label printer for labels which contain a provision that certifies the lighting fixture has been tested by a certain laboratory. The purchase order together with a resale certificate is sent to the printer by the manufacturer. In turn, the purchase order is sent to the laboratory by the printer to confirm that the products have been tested. The laboratory then tells the printer what issue numbers to print on the labels. The labels are printed and then sent to the laboratory. The labels are checked by the laboratory to see that product identification and issue numbers are correct. The labels are then sent to the manufacturer who places the label on the product. The printer sends the bill to the laboratory and a copy to the lighting manufacturer. The manufacturer pays the laboratory for the testing and for the labels. In turn, the laboratory pays the printer for the labels.

There was no taxable use of the labels by the laboratory since all it did was to inspect the labels and ship them on to the manufacturer who affixed them to the property. Accordingly, the transaction between the printer and the laboratory qualified as an exempt sale for resale. Also, the sale of the labels to the lighting manufacturer by the laboratory is exempt from tax since the manufacturer affixed the labels to property to be sold and sold them along with and as a part of the property. 4/30/81.

195.2118 Video Cassette Labels. The following two types of labels which perform the functions as described below are nontaxable sales for resale when sold to lessors of video cassettes and attached to video cassettes that will be leased (sales).

(1) **Tamper-Guard Label:** (a) identifies the video lessor by name; (b) usually gives the video lessor's address and telephone number; (c) gives a warning not to tamper with the plastic container which holds the video (magnetic) tape; and (d) provides a security for the lessor in that it discloses whether the magnetic tape has been replaced with a copy.

Tamper-Guard is constructed of a material which does not allow the label to be removed and reapplied; it is placed on the seam of the video container.

(2) **Lessee Information Label:** (a) provides the lessee with information as to the lease terms, directions on how to store the video, or the type of movie on the tape.

Information labels are made of a material which would allow them to be removed and replaced. 11/20/89.

195.2120 Wing Tags. Purchases of wing tags are attached to fowl for identification and trade-mark purposes are exempt from tax if the tag remains with the fowl until it reaches the ultimate consumer. 10/6/53.