



STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

RICK SNYDER  
GOVERNOR

NICK A. KHOURI  
STATE TREASURER

January 12, 2018

[REDACTED]

Re: Technical Advice Letter: [REDACTED], sales and use tax treatment of packaging materials and labels

Dear [REDACTED]:

Thank you for your letter dated June 8, 2017, and follow-up discussion to clarify the facts. You requested a technical advice letter regarding the sales and use tax treatment of packaging materials and labels used by [REDACTED] ([REDACTED]). Your request meets the requirements for a technical advice letter under Revenue Administrative Bulletin 2016-20.

Facts:

[REDACTED] develops, manufactures, and distributes [REDACTED] products in Michigan. After manufacturing, its products are placed in finished goods inventory. When an order is received, the product is sent to a fulfillment building adjacent to the manufacturing building. The two categories of materials [REDACTED] is requesting guidance on are:

1. Packaging materials: stretch wrap, bubble wrap, newsprint, kraft paper, strapping, carton sealing tape, pallets and boxes used to pack, tape and label for purposes of shipping its products to its customers.
2. Labels: adhesive [REDACTED] label stickers placed on [REDACTED] after they are manufactured that are intended to be removed before use.

None of these materials are purchased at wholesale.<sup>1</sup> The materials are non-returnable. [REDACTED] does not separately charge its customers for packaging materials used in shipping the products. For purposes of this letter, the Department assumes there is also no separate charge for labels. You ask whether the packaging materials are exempt from tax under a resale exemption and whether the labels are exempt under Mich Admin Code, R 205.94.

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<sup>1</sup> Your letter is unclear if this means that sales or use tax is paid on these materials.

Law and Analysis:

Michigan's General Sales Tax Act (GSTA) imposes a 6% sales tax on the gross proceeds of "all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration..."<sup>2</sup> A "sale at retail" is "a sale, lease, or rental of tangible personal property for any purpose other than resale, sublease, or subrent."<sup>3</sup> Therefore, sales for purposes of resale are exempt from sales tax.<sup>4</sup>

Because Michigan's sales tax is imposed on the seller, the seller is the only party that may request a sales tax refund. In other words, a purchaser that paid sales tax to its vendor must request a refund from the vendor, which may in turn request a sales tax refund from the Department.

*1. Packaging Materials*

Mich Admin Code, R 205.68 (Rule 18) addresses the sales tax treatment of "containers," which are defined as:

[T]he articles and devices in which tangible personal property is placed for shipment and delivery, such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, tote boxes, pallets, racks, bottles, drums, carboys, cartons, sacks, and materials from which such containers are manufactured.<sup>5</sup>

Rule 18 provides that sales of containers for purposes of resale are exempt.<sup>6</sup> The "packaging materials" you describe appear to be "containers" for purposes of sales and use tax. However, the containers used to ship the goods manufactured by ██████████ are not sold to its customers. That is, ██████████ does not make a sale at retail of the container; therefore, it is not entitled to claim the resale exemption when it purchases the containers.

You indicate that ██████████ has taken the position that these packaging materials are exempt for purposes of resale because "such packaging materials *further* a sale and are deemed to become a part of the customer's purchase, thus, packaging is exempt *for everybody* because it is *furthering* the sale of the product." It is unclear what legal basis there is for such an argument, and your letter does not identify one.<sup>7</sup> The GSTA exempts property sold for purposes of resale. It does not exempt property used to "further a sale."

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<sup>2</sup> MCL 205.52(1).

<sup>3</sup> MCL 205.51((1)(b) (emphasis added).

<sup>4</sup> The Use Tax Act (UTA) provides a like exemption. MCL 205.94(1)(c).

<sup>5</sup> Mich Admin Code, R 205.68(1).

<sup>6</sup> Mich Admin Code, R 205.68(3).

<sup>7</sup> Tax exemptions are strictly construed against the taxpayer claiming it and in favor of the Department. *Elias Bros. Restaurants, Inc. v Dep't of Treasury*, 452 Mich 144, 150 (1996). Therefore, the burden of proving entitlement to an exemption rests on the party claiming it. *Andrie, Inc. v Dep't of Treasury*, 496 Mich 161, 171 (2014).

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## *2. Labels*

The Michigan Administrative Code (Rule 44) provides that sales of labels, tags or nameplates that do not accompany the property being sold are sales for consumption and are therefore taxable.<sup>8</sup> Conversely, Rule 44 provides:

Sales of labels or nameplates to be affixed to tangible personal property which is taxable when sold at retail, or to the containers sold with such property, are not subject to tax if the labels or nameplates are an inseparable part of the property sold and purchased by the buyer as a part of such property.<sup>9</sup>

The adhesive ██████████ label stickers are affixed to the property and intended to remain on the property when purchased by the buyer. For purposes of Rule 44, they are “inseparable.” Therefore, the labels are not taxable when purchased by ██████████ under the facts.

Please contact me if you have any further questions regarding this matter.

Sincerely,

Lance R. Wilkinson, Administrator  
Tax Policy Division

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<sup>8</sup> Mich Admin Code, R 205.94(1).

<sup>9</sup> Mich Admin Code, R 205.94(2).