

“CHEP” Pallets Exempt as Wrapping Supplies

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Companies which have paid Pennsylvania Sales and Use Tax on CHEP pallets should file refund claims immediately! A three-judge panel of the Commonwealth Court has ruled that “CHEP” pallets qualify as exempt “wrapping supplies.” *Procter & Gamble Paper Products Co. v. Commonwealth*, 786 F.R. 2009, October 13, 2011.

P&G Paper rents pallets from CHEP USA. Following use, the pallets are returned to CHEP, which reconditions and then reissues the pallets.

At audit, the Pennsylvania Department of Revenue assessed Use Tax on P&G Paper’s payments for use of the pallets. On appeal, the Department’s Board of Appeals and the Board of Finance and Revenue rejected the company’s claim that the pallets are exempt “wrapping supplies” on the basis that the pallets are taxable as “returnable containers.”

The Tax Reform Code of 1971 provides an exemption for:

the sale at retail, or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, **non-returnable containers** and all other wrapping supplies, when such use is incidental to the delivery of any personal property, except that any charge for wrapping or packaging shall be subject to tax at the rate imposed by Section 202.

72 P.S. § 7204(13)

The regulations are to similar effect, providing the following definitions:

Returnable containers – Containers which are designed to deliver property more than one time, including containers which require cleaning, repair or refurbishing prior to their subsequent use.

Wrapping supplies – The term includes property, **except for returnable containers** as defined in this section, which is used as an outside covering or internal packing in order to deliver personal property to a purchaser. The term also includes items such as nonreturnable containers, mailing labels, envelopes and packing slips attached to the covering transferred with the personal property, instruction sheets, warranty cards, material for preservation of the property, paper and plastic plates, cups and similar items. The term does not include napkins, wooden or plastic spoons, forks, straws and similar items and these items are therefore subject to tax when sold to restaurants or other eating places.

61 Pa. Code § 32.1.

The Commonwealth Court panel endorsed P&G Paper’s argument that the pallets, themselves, are not “containers” and constitute exempt “wrapping supplies.” As the term “container” is not defined in the statute, the court looked to the common meaning, citing a dictionary definition defining a “container” as:

a receptacle (as a box or jar) or a formed or flexible covering for the packing or shipment of articles, goods or commodities.

The term “contain” was defined as “to have within: hold.” The court then stated:

A wooden pallet is merely a frame with boards placed upon it and attached to it. It is neither a receptacle nor a covering for the products placed upon the pallet. Indeed, P&G Paper must use card board slip sheets, corner posts, and stretch wrap to cover and hold products placed on a pallet.

The court seemed to employ somewhat questionable logic in distinguishing the Pennsylvania Supreme Court’s decision in *Commonwealth v. Yorktowne Paper Mills, Inc.*, 426 Pa. 18, 231 A.2d 287 (1967). In that case, in which non-returnable pallets were treated as exempt wrapping supplies, the court referred to pallets as “containers.” The Commonwealth Court stated:

The Board argues that, in *Yorktowne*, our Supreme Court determined that pallets are “containers.” We disagree. In *Yorktowne*, the question was whether the company’s purchase of lumber, nails and metal bands was subject to the tax. The company placed its products on pallets, i.e., the lumber and nails, and secured the products by placing metal bands around the entire unit. *Id.* at 20-21, 231 A.2d at 288. In referring to the pallets as “containers,” the Court was referring to the entire unit, i.e., the pallet with the metal bands securing the product. Here, there is no question that the unit load, i.e., the slip sheet, corner posts, stretch wrap and wooden pallet, “contains” products. However, that is not the issue. Rather, the issue is whether the wooden pallets by themselves, apart from the slip sheet, corner posts and stretch wrap, are “containers.” Alone, the wooden pallets are only part of the “containers,” i.e., the flooring.

The Commonwealth filed Exceptions on November 10, requesting further review by the Commonwealth Court. Most likely this case ultimately will be appealed to the Pennsylvania Supreme Court.

If your company has paid tax on CHEP pallets, we can assist you in filing refund claims which may then be held pending the ultimate final decision. As a three-year statute of limitations generally applies to refund claims, any delay could deprive you of the ultimate opportunity for refund of amounts you have paid.

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