

PA Supreme Court Affirms That Shipping Pallets are Not Taxable, Creating Refund Opportunity for Purchasers

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Authors: Lee A. Zoeller, Sara A. Lima

The Pennsylvania Supreme Court has affirmed that returnable shipping pallets are not subject to the state's sales and use tax.¹ The Commonwealth Court's decision in favor of taxpayers on this issue is now final, and any taxpayers who have paid tax on pallets should consider filing a claim for refund.

At the Commonwealth Court, the Department of Revenue argued that pallets were taxable because they are "returnable containers" that are expressly carved out of the wrapping supply exemption. As authority, the Department cited its own May 9, 2008 letter ruling concluding that returnable pallets were subject to tax in Pennsylvania. Based on that letter ruling, vendors had begun charging tax on the lease of the pallets.

The taxpayer, Procter & Gamble, pointed to a multitude of dictionary definitions and industry standards that support its position that, regardless of whether a pallet is "returnable," pallets are simply not "containers." Further, the taxpayer relied on 58 years of regulatory history, during which time the Department only identified items that had volume, like barrels, boxes and bottles, as "containers."

The court agreed with Procter & Gamble that a pallet is not a "container." Instead, it found pallets to be more akin to "flooring," or "only part of the 'container.'" Essentially, the court confirmed Procter & Gamble's assertion that the Department could not choose to read the term "container" out of the statute, in which case any "returnable" wrapping supply would be taxable.

As a result of this decision, any taxpayers who have been paying tax on returnable pallets based on the Department's letter ruling should cease paying tax on their future purchases, and file refund claims for all open periods. Moreover, this development could impact the law in other states with similar statutes. Taxing authorities in some of those states have issued written guidance advising that pallets are taxable.² As a result, taxpayers should consider filing refund claims in other states as well.



If you have questions about the *Procter & Gamble* decision and how to pursue your refund claim, please contact Lee Zoeller or Sara Lima, who represented Procter & Gamble in this matter, or the Reed Smith lawyer with whom you usually work. For more information on Reed Smith's Pennsylvania tax practice, visit www.reedsmith.com/patax.

1. *Procter & Gamble Paper Products Company v. Pennsylvania*, 29 A.3d 1221 (Pa. Commw. 2011). <http://www.reedsmith.com/Pennsylvania-Commonwealth-Court-Strikes-Down-Department-of-Revenues-Narrow-Interpretation-of-the-Wrapping-Supply-Exemption-from-Sales-Use-Tax-10-14-2011/>
2. For example, the New Jersey Division of Revenue has taken the position that pallets leased to manufacturers through a pooling arrangement are taxable as returnable containers. New Jersey Regulatory Services Private Letter Ruling dated June 2, 2008.

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