STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GENESEE BREWING COMPANY, INC.	:	
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period December 1, 1994 through August 31, 1997.	:	DETERMINATION DTA NO. 817305

Petitioner, Genesee Brewing Company, Inc., 445 St. Paul Street, Rochester, New York 14605, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1994 through August 31, 1997.

On June 21, 2000, petitioner, by its representative, John R. McQueen, Esq., and the Division of Taxation, by Barbara G. Billett, Esq. (James Della Porta, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by November 3, 2000, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Jean Corigliano, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether petitioner's purchases of wooden pallets and bungs are exempt from the imposition of sales tax pursuant to Tax Law § 1115(a)(19), which provides an exemption from sales tax on retail sales of cartons, containers and other packaging materials used or consumed by a vendor in packaging or packing tangible personal property for sale.

II. Whether, in the alternative, the wooden pallets and bungs may be deemed to have been purchased for resale.

FINDINGS OF FACT

1. The Division of Taxation ("Division") and petitioner, Genesee Brewing Company, Inc. ("Genesee"), executed a stipulation of facts which has been substantially incorporated into these findings of fact.

2. Genesee is a New York corporation engaged in the business of brewing and selling beer.

3. Genesee sells its product primarily to wholesale distributors. The beer is sold in cans, bottles and kegs. The distributors arrange to pick up the product at Genesee's plant in Rochester either by common carrier or by using the distributor's own truck.

4. Genesee delivers a small amount of its product to purchasers located in Monroe County. Genesee makes these deliveries in its own trucks.

5. Genesee ships cases of either bottles or cans and individual kegs on wooden pallets constructed to specific dimension for use with Genesee's palletizer equipment.

6. Genesee uses three types of pallets. One kind is used for cases of bottles and cans and two different kinds are used for kegs. Pallets used to ship cases of cans or bottles are 5 inches high by 35 inches wide by 39 inches long. These pallets weigh approximately 47 pounds each. Genesee's name, in one inch high letters, is stamped in ink on each such pallet. Pallets used to ship kegs are 4.75 inches deep by 33 inches wide by 34 inches long and weigh approximately 27 pounds each. The pallets used to ship kegs do not bear Genesee's name.

7. Genesee's product is shipped on the pallets to its ultimate destination. Where Genesee uses its own trucks to ship product to purchasers in Monroe County, the pallets do not remain with the purchaser of the product. In all other cases, the pallets do remain with the purchaser.

8. Section 5 of Genesee's standard Distributor Agreement provides:

> (a) Distributor shall pay Brewery a deposit for all cooperage[1], pallets, cases and returnable bottles in an amount and in accordance with such terms as may be established from time to time by Brewery. Brewery may, in addition, maintain a cooperage control report or other records showing cooperage delivered to Distributor and cooperage returned to Brewery by Distributor. Brewery may from time to time charge Distributor at then current memorandum rates for all cooperage deemed to be lost by reason of a comparison between the amount of cooperage shown on Brewery's control report for Distributor, and cooperage actually at Distributor's premises and on Distributor's customers' premises. Distributor shall promptly pay such charges. Deposit charges and memorandum rates shall be at the following amounts unless and until changed by Brewery:
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> DEPOSIT CHARGE: Hoff Stevens and Sankey: ½ Barrel - $10.00; ¼ Barrel - $10.00
> MEMORANDUM RATE: Hoff Stevens: ½ Barrel - $55.00; ¼ Barrel - $45.00
> Sankey: ½ Barrel - $70.00; ¼ Barrel - $65.00
>
> (b) Distributor shall promptly recover empty cooperage, cases, pallets and returnable bottles from Distributor's customers and return them to Brewery as expeditiously as possible. Each case returned to Brewery by Distributor shall contain returnable bottles of size, shape and characteristics of those used by Brewery, sorted by size, shape and color. Brewery shall not be obligated to accept, return, or provide any credit or refund for any bottles, cooperage, pallets or dust covers which cannot be identified as its own. Upon receipt of returned empty cooperage, pallets, cases and returnable bottles, Brewery shall credit Distributor's account, or refund to Distributor in cash the deposit made with respect thereto, after deducting any charges assessed by Brewery for handling any foreign cooperage, cases or bottles or any improperly sorted cooperage, cases or bottles.

9. Genesee collects a deposit of $10.00 for each pallet that is transferred to a distributor. The amount is established by oral agreement between Genesee and the distributor and is not

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[1] "Cooperage" refers to wooden casks or tubs for draft beer or bulk wine (***see***, Webster's Third New International Dictionary 501[1986]) although Genesee now uses aluminum kegs.

contained in the Distributor Agreement or any other written agreement. The deposit amount is based on the industry standard and is intended to reflect Genesee's actual cost.

10. During the audit period, some of Genesee's pallets from as far away as California were returned by distributors.

11. If a distributor returns a pallet, its deposit is refunded. If a pallet is not returned or is returned damaged or destroyed, Genesee covers its cost by retaining the deposit. During the audit period, a majority of Genesee's pallets were returned.

12. Deposits are refunded only upon the return of the pallets.

13. Genesee's standard Distributor Agreement makes the distributor liable for any difference between Genesee's actual replacement or repair costs for pallets and the industry standard deposit price. Petitioner does not always charge distributors for such difference. During the audit period, Genesee's average cost per pallet was $10.70.

14. Genesee has never initiated legal action against a distributor to repossess a pallet.

15. Genesee expenses the cost of the pallets for Federal and New York State income tax purposes.

16. Genesee maintains records of pallets shipped to and returned by each distributor. For accounting purposes, Genesee treats a pallet deposit collected from a distributor as a deposit liability until such time as the deposit is returned to or forfeited by the distributor. Genesee does not report deposits as revenue for tax and accounting purposes.

17. Genesee provides incentives to its employees to identify non-Genesee pallets returned to Genesee. Genesee palletizers will work only with Genesee's pallets.

18. Genesee did not collect sales tax on pallet deposits.

19. Genesee also collects deposits on all kegs and returnable bottles.

20. As with deposits for pallets, if a distributor returns a bottle, its deposit is refunded; if a bottle is not returned, Genesee will keep the deposit.

21. The deposit system for kegs is different from the system used for pallets and bottles. Pursuant to the Distributor Agreement, Genesee charges a deposit of $10.00 for each keg that is shipped full to a distributor, which deposit price does not and is not intended to reflect Genesee's actual cost. Genesee's average cost per keg during the audit period was $83.00.

22. If a distributor returns a keg, its deposit is refunded. However, under the Distributor Agreement, if a keg is not returned, Genesee will retain the deposit and charge the distributor an additional penalty (the "Memorandum Rate"), which varies depending upon the type of keg. The average Memorandum Rate during the audit period was $58.75. Genesee does not charge a Memorandum Rate if a distributor fails to return a pallet.

23. During the audit period, the average cost (not including bottle deposit) to a distributor of a case of bottled beer was $8.00.

24. Pallets are used to ship 56 cases of bottles (a "bottle load").

25. Durng the audit period, the average cost (not including pallet or bottle deposits) to a distributor of a bottle load was $448.00.

26. During the audit period, the average cost (not including keg deposit or Memorandum Rate) to a distributor of a keg full of Genesee's product was approximately $30.00.

27. Pallets are used to ship 4 kegs of Genesee beer (a "keg load").

28. During the audit period, the average cost (not including pallet deposit, keg deposit or Memorandum Rate) to a distributor of a keg load was $120.00.

29. Genesee concedes that its keg purchases are subject to sales tax.

30. Genesee uses stoppers, called bungs, to seal the holes in kegs through which the kegs are filled with Genesee's product.

31. Bungs are designed for one-time use, and when kegs are returned to Genesee, the bungs must be removed and discarded so that the kegs can be cleaned and refilled for their next use.

32. Each time a keg is filled with Genesee's product, a new bung is inserted.

33. Genesee's average cost per bung during the audit period was 9.7 cents. Genesee did not impose a separate charge for bungs when Genesee furnished a distributor with a full keg.

34. The Division conducted a sales tax field audit of Genesee's records for the period December 1, 1994 through August 31, 1997. The Division issued to Genesee a Notice of Determination (number L-001693482) asserting sales tax due in the amount of $86,815.83 on Genesee's purchases of pallets and bungs.

35. The Division determined that sales tax of $68,915.67 is due on Genesee's purchases of pallets. If the Division of Tax Appeals determines that the purchases of pallets are not subject to sales tax, the Notice of Determination should be reduced by that amount.

36. The Division determined that sales tax of $17,900.16 is due on Genesee's purchases of bungs. If the Division of Tax Appeals determines that the purchases of bungs are not subject to sales tax, the Notice of Determination should be reduced by that amount.

37. At the request of both parties, official notice is taken of the record of proceeding in the ***Matter of Nehi Bottling, Co., Inc. v. Gallman*** (39 AD2d 256, NYS2d 824, ***affd without opinion***, 34 NY2d 808) filed in the Appellate Division, Third Department.

SUMMARY OF THE POSITIONS OF THE PARTIES

38. Genesee argues that its purchases of pallets and bungs are exempt from the imposition of sales tax pursuant to Tax Law § 1115(a)(19), which provides an exemption from sales tax on retail sales of cartons, containers and other packaging materials which are used and consumed by a vendor in packaging or packing tangible personal property for sale. In the alternative, Genesee claims that the pallets and bungs were purchased for resale. The latter argument was raised for the first time in Genesee's brief.

39. The Division contends that Genesee should not be allowed to raise the resale exclusion since this position was not advanced on audit or in the petition. It claims that allowing Genesee to raise the resale issue at this juncture would harm the Division because the Division would have asserted sales tax due on petitioner's sales of the pallets and bungs, if the resale claim had been made earlier. Regarding the resale exclusion, the Division argues that Genesee purchased the pallets and bungs for its own use and never sold them to its customers.

The Division also argues that Genesee is not entitled to the exemption for packaging materials. It notes that no exemption is allowed for reusable, costly containers which are returned to the vendor for refilling, such as beer kegs, and likens the pallets to such containers. It argues that the customer is not free to dispose of the pallets as he or she sees fit, and therefore, that the pallets are not actually transferred to the customer. The Division argues that the bungs are an integral component of the kegs, and as such they are not exempt from sales tax.

CONCLUSIONS OF LAW

A. Tax Law § 1105(a) imposes a sales tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article." All sales of tangible

personal property are presumptively subject to tax pursuant to Tax Law § 1132(c) "until the contrary is established." Petitioner claims that its purchases of pallets and bungs are exempted from the sales tax by Tax Law § 1115(a)(19). Where a taxpayer claims an exemption from tax the burden is on the taxpayer to show that its interpretation of the statute is the only reasonable interpretation or that the Division's interpretation is unreasonable (***Matter of Grace v. State Tax Commn.***, 37 NY2d 193, 371 NYS2d 715, ***lv denied*** 37 NY2d 708, 375 NYS2d 1027).

B. Tax Law § 1115(a)(19) provides an exemption from the sales tax for:

> Cartons, containers, and wrapping and packaging materials and supplies, and components thereof for use and consumption by a vendor in packaging or packing tangible personal property for sale, *and actually transferred by the vendor to the purchaser* (emphasis added).

C. Pallets are specifically included in the regulatory definition of packaging material (20 NYCRR 528.20[b][1]). However, mere inclusion of an item in the definition of packaging materials, cartons and containers does not automatically establish that a particular item of packaging material is eligible for the container exemption. To qualify for the exemption, it must be shown that the container or packaging material is "actually transferred" to the purchaser within the meaning of Tax Law § 1115(a)(19) (***see***, ***Matter of Upstate Farms Cooperatives,*** Tax Appeals Tribunal, January 11, 2001). "Actually transferred," as that term is used in the Tax Law and regulations is defined in 20 NYCRR 528.20(b)(4) as follows:

> *Actually transferred* means that the packaging material is physically transferred to the purchaser, for whatever disposition the purchaser wishes.
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> Example 1: A returnable soda bottle may be returned for a refund of deposit or disposed of otherwise. Such a bottle is actually transferred to the purchaser and may be purchased without payment of tax.

Example 2: A keg of beer is required to be returned to the vendor after its contents is used. This keg is not actually transferred to the purchaser of the beer, and may not be purchased by the vendor without payment of tax.

The requirement of actual transfer is elaborated upon in section 528.20(c) of the sales tax regulations which provides, in relevant part, as follows:

> (1) Returnable containers, such as drums, barrels, or acid carboys, when purchased at retail by a person *who does not transfer ownership of the container*, are subject to tax. Title to the container remains in the seller when possession of the container is transferred to one who purchases commodities contained therein and then returns the container to the seller for refilling (emphasis added).
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> *Example 1:* A chemical firm produces acid for use in various processes. The acid is placed in carboys which are purchased by the firm for moving the acid between plants. The carboys are taxable.
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> (2) Cartons or other packaging materials purchased by a vendor for his own use or consumption are subject to tax.
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> (3) Racks, trays or similar devices used to facilitate delivery of the vendor's product if such devices are not transferred with the product to the purchaser are subject to tax.
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> *Example 2:* A baking company delivers bread to a grocer in wire trays. After unloading, the deliveryman takes the trays with him. The trays are taxable to the baking company.

As set forth in both section 528.20(b)(4) and 528.20(c) of the regulations, the exemption provided in Tax Law § 1115(a)(19) calls for the satisfaction of two requirements: (1) the physical transfer of the packaging materials, containers or cartons from the seller of the commodity to the purchaser of that commodity and (2) transfer of ownership of the packaging materials, containers or cartons.

D. Undoubtedly, there was physical transfer of the pallets from Genesee to its distributors. Genesee pallets were used to ship 56 cases of individual bottles, a "bottle load," at

an average cost per bottle load of $448.00 or 4 kegs of Genesee beer, a keg load, at an average cost per keg load of $120.00. With the exception of products delivered within Monroe County, the loaded pallets were picked up by Genesee's wholesale distributors at the Genesee plant in Rochester. Thus, the pallets were physically transferred to Genesee's customers at Genesee's plant. The wholesale distributors took possession of the pallets and routinely used them to deliver product to their customers throughout the United States, as far away as California.

E. The more contentious issue is whether Genesee maintained ownership of the pallets after they were transferred to the distributors. The resolution of this issue rests on a determination of what circumstances demonstrate a transfer of ownership. Here, the primary evidence that Genesee retained ownership of the pallets is its charging of a refundable deposit for the pallets. However, an opinion of the Appellate Division, Third Department, establishes that the charging of a refundable deposit for property physically transferred to the vendee does not establish that ownership of the property remains with the vendor charging the deposit (***see***, ***Matter of Nehi Bottling Co., Inc. v. Gallman*** (39 AD2d 256, 257, 333 NYS2d 824, ***affd without opinion***, 34 NY2d 808; 20 NYCRR 528.20[b][4]).

Genesee's pallet deposit is indistinguishable from the bottle deposit described in ***Nehi Bottling*** . That case was decided before the adoption of the packaging materials exemption in Tax Law § 1115(a)(19). However, the reasoning of the ***Nehi Bottling*** opinion is applicable to the packaging exemption and has been applied in the context of that exemption by the Division (***see***, ***Matt Brewing Co.***, Advisory Op., December 20, 1994; ***Clinton's Ditch Co-op.Co.***, Advisory Op., July 24, 1990).

The facts of ***Nehi Bottling*** are similar to the facts that exist here. Nehi physically transferred soda bottles and carrying cases to its customers and collected a deposit for each bottle and carrying case. The deposit, which was less than the cost of those items to Nehi, was credited to the retailers and distributors when the bottles were returned to the plant. Nehi's name was printed on each bottle (Transcript of hearing held before Alfred Rubinstein, Hearing Officer, State Tax Commn., on September 17, 1968). A distributor contract used by the bottler required distributors "to pick up and return [to the bottler] all empty bottles and cases" (Reply Brief for petitioner, Nehi Bottling Co., Inc., at 4 [footnote 2] quoting distributor contract). Based on these facts, the State Tax Commission found that ownership of the bottles remained with the vendor at all times. The court disagreed finding no support in these facts for the contention that Nehi retained ownership of the bottles or other items when it transferred possession to its distributors. The court explained the legal consequence of the taking of a deposit as follows:

> The taking of security for the return of the bottles, from the party to whom they were delivered, *so long as there is no evidence of an agreement*, and the party is under no legal obligation to return them, he having the right to retain them if he chooses to leave the money deposited as a payment for the bottles, amounts in law to a sale of them, at the election of the party to whom they are delivered (***Nehi Bottling Co., Inc. v. Gallman***, ***supra***, 333 NYS2d at 825, quoting ***People v. Cannon***, 139 NY 32, 49-50; emphasis added).

Applying this standard, the court held that the deposit system in ***Nehi Bottling*** amounted to a continuous offer by Nehi to repurchase those bottles and carrying cases which any of its customers might decide to offer to Nehi for repurchase. Applying the reasoning of ***Nehi Bottling*** to Genesee's transactions with its distributors results in a conclusion that Genesee's collection of a deposit on all pallets transferred to its distributors does not establish that ownership of the pallets remained with Genesee. Under the reasoning of ***Nehi Bottling***, some

separate agreement or understanding is necessary to show that Genesee retained ownership of the pallets (***see also, Matter of Upstate Farms Cooperatives***, ***supra*** [where, in the absence of any written agreement between the vendor and vendees, the Tax Appeals Tribunal found that milk cases used to deliver the petitioner's products remained the property of the petitioner at all times as a consequence of regulations of the Department of Agriculture and Markets]).

F. The Division contends that section 5(b) of the Distributor Agreement constitutes an agreement which evidences Genesee's continued ownership of the pallets even after their transfer to the distributors. The specific language relied on by the Division states: "Distributor shall promptly recover empty cooperage, cases, pallets and returnable bottles from Distributor's customers and return them to Brewery as expeditiously as possible." The Division contends that this language cannot be reconciled with Genesee's contention that there was an "actual transfer" of the pallets to the distributors. I disagree. The Distributor Agreement lists returnable bottles, along with pallets and barrels, as items that the distributor is required to collect and return. No one argues that Genesee retains ownership of the bottles as a result of this provision. Moreover, in ***Nehi Bottling*** the court held that Nehi sold the bottles to its distributor even though Nehi's contract with the its distributor contained a provision requiring the return of the bottles to Nehi. The court looked beyond that provision to the substance of the transaction.

The substance of the transaction between Genesee and its distributors supports treating the pallets as "actually transferred" to the distributors. The wooden pallets were used and reused by both Genesee and its distributors until they broke or wore out. The reuse of the pallets decreases Genesee's costs of packaging cases and kegs of beer. Therefore, it has an economic incentive to encourage return of the pallets. Without the deposit system to supply the economic

incentive to return the pallets, the distributor would have no reason to return the pallets. With the incentive supplied by the deposit system, a majority of the pallets are returned. However, the decision to return the pallets rests with the distributors who have no legal obligation to return them. Section 5 of the Distribution Agreement gives the distributor no more incentive or disincentive to return the pallets than the deposit itself. An examination of how section 5(a) treats Genesee's kegs demonstrates that the pallets are treated more like returnable bottles than like kegs. Pursuant to section 5(a) of the Distributor Agreement, failure to return a keg (or barrel as it is described in the agreement) results in forfeiture of the deposit and a healthy penalty, the memorandum rate of between $55.00 and $65.00. There is no penalty for failure to return the pallets, indicating that Genesee treated the pallets more like returnable bottles than kegs.[2] Moreover, Genesee has never attempted to recover pallets through a legal proceeding. Thus, the pallets more closely resemble the bottles described in section 528.20(b)(4) of the regulations than the kegs of beer also described there. In substance, Genesee and its distributors treat the pallets and returnable bottles in a substantially similar fashion, while the barrels are treated in a different fashion. This indicates that for tax purposes the pallets and bottles should be treated in the same manner.

The Division also argues that the placement of Genesee's name on the pallets creates a presumption that ownership of the pallets did not change hands. In ***Nehi***, the name "Nehi" was embossed on each bottle. The Appellate Division did not find this a significant factor in determining ownership of the bottles. Likewise, I do not find the embossing of Genesee's name

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[2] The sum of the memorandum rate and the deposit (between $65.00 and $75.00) is near or less than the average cost of a keg during the audit period ($83.00). Therefore, it appears that the memorandum rate was intended as a penalty to induce return of the kegs and not as total compensation for kegs not returned.

on the pallets to be significant. In addition, Genesee's name was stamped only on the pallets used to deliver cases of bottles and cans and not on those used to deliver kegs. The reason why the name is not placed on pallets used to deliver kegs is not in the record.

The reasoning applied in this determination is similar to the reasoning applied by the Division in two different advisory opinions. An advisory opinion is a written statement issued on behalf of the Commissioner of Taxation regarding the application of the Tax Law to a specific set of facts. Advisory opinions are not binding on the Commissioner except with respect to the person to whom the opinion is issued (Tax Law § 171[24]). Although it has no precedential value, the advisory opinion issued to Clinton's Ditch Co-op, Co. (***supra***) contains analysis and reasoning which is similar to the analysis and reasoning of this determination, and I find the reasoning persuasive. The facts are described in that opinion as follows:

> Petitioner purchases plastic trays in which it sells all of its 2 Liter product. The trays have a useful life of over three years. The cost of the plastic trays to the Petitioner vary from $1.85 to $2.15 each depending on the quantity ordered and market conditions. Petitioner charges a $2.00 deposit for each plastic tray. The tray remains with the product for display in most retail stores. When the product is sold by the retailer, he returns the tray to the wholesaler who returns it to the Petitioner. For each return the $2.00 deposit is refunded. The tray is then refilled with filled plastic bottles and the cycle continues.

Based on these facts, the Division found that the petitioner's transfer of the trays to its customers constitutes exempt sales of containers and packaging materials within the meaning and intent of Tax Law § 1115(a)(19) and section 528.20(a),(b) of the regulations. In arriving at this conclusion, the Division applied the statute and regulations and the court's decision in ***Nehi Bottling***. Regarding that case, the Division found no distinction between the bottles Nehi transferred to its distributors and the plastic trays transferred by the petitioner (***see also***, ***Matt Brewing Co***., ***supra***).

Based on the facts established by the stipulation and exhibits, I conclude that Genesee's pallets were actually transferred to the distributors for whatever disposition they wished; that the distributors were free to return the pallets and collect the deposit or to dispose of them in any other fashion; and that the pallets are distinguishable from the returnable containers described in section 528.20(c) of the Division's regulations. Inasmuch as the Division has offered no rational basis for distinguishing among Nehi's returnable bottles, the plastic trays described in Clinton's Ditch Coop and Genesee's pallets, Genesee has carried its burden of showing that its interpretation of the statute and regulations is reasonable and that the Division's interpretation is not. Accordingly, Genesee's purchase of the pallets is not subject to sales tax.[3]

G. Genesee argues that its bungs are actually transferred to its customers and that each bung is used and consumed by Genesee in the packaging of its product, since a one-time use of a single bung is required to fill each keg. It notes that each bung is "actually transferred" to a Genesee customer when the keg is transferred to the customer and that customers may dispose of bungs as they desire.

The Division argues that Genesee's purchase of bungs cannot be exempt from sales tax because the bungs are part of the kegs and the kegs are not exempt.

I conclude that the bungs qualify for the packaging exemption. There is no question that the bungs constitute packaging material. They are similar to the lid of a box, the cap on a soda bottle or the cork in a wine bottle. They are essential to the packaging of beer in a keg, but they are not an inseparable part of the keg. If a keg is returned with a bung in it, Genesee removes the

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[3] This conclusion does not apply to the use of pallets by Genesee to deliver its product to its own customers in Monroe County. That use, however, was de minimis and should not be used as a basis for imposing the sales tax on all of Genesee's purchases.

bung and discards it. If a keg is returned without a bung, it saves Genesee the trouble of removing it. No charge of any kind is made for the bung, and the charges made for the keg do not include the value of the bung. The distributor receives the deposit amount for each keg it returns to Genesee, whether the bung has been removed or not. Accordingly, the bungs are exempt from sales tax.

H. Since it has been decided that Genesee's purchase of both the pallets and bungs are exempt from the imposition of sales tax, Genesee's alternative argument, that they qualify for the resale exclusion, will not be considered here. Accordingly, the Division's contention that Genesee should not be allowed to raise the resale exclusion as a defense against payment of the tax need not be considered.

I. The petition of Genesee Brewing Company, Inc. is granted, and Notice of Determination number L-001693482 is cancelled.

DATED: Troy, New York
March 01, 2001

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE