

## PALLETS BY THEMSELVES NOT CONSIDERED CONTAINERS

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In *Procter & Gamble Paper Products Company v. Commonwealth*, No. 768 F.R. 2009 (Pa. Commw. Oct. 13, 2011), a panel of the Commonwealth Court held that wooden pallets by themselves used in shipping were not considered “containers” and therefore cannot be considered returnable containers subject to sales tax upon their rental and use.

The taxpayer manufactured various products and assembled its “unit loads” of products on wooden pallets to facilitate delivery to its warehouse. The taxpayer rented its pallets from a company that operated a pallet and container pooling service. A pallet consisted of a wooden frame with open slates along the bottom for lifting by forklifts and parallel wooden boards with space between them attached to the top of the frame. To create its unit loads, the taxpayer used machinery to place a cardboard slip directly onto the pallet to add stability and prevent shifting during shipment. Products were then stacked on top of these two items and another cardboard slip was placed on top of the products. The taxpayer then added corner posts and encased the products in stretch wrap to keep the products from falling off the pallet.

The taxpayer argued that the wooden pallets were exempt as wrapping supplies under Section 204(13) of Article II of the Tax Reform Code (the Code). 72 P.S. § 7204(13). The taxpayer also asserted that the Pennsylvania Supreme Court had already held that wooden pallets were non-taxable as wrapping supplies. See *Commonwealth v. Yorktowne Paper Mills, Inc.*, 231A.2d 287, 289-290 (Pa. 1967). In response, the

Department of Revenue argued that the company’s wooden pallets that were rented met the definition of “returnable containers” under the regulations whereby the containers were designed to deliver property more than one time. 61 Pa. Code § 32.6(a)(2). Because the pallets were containers and returnable the wrapping supply exemption was not applicable. The Department further took issue with the characterization of the taxpayer that the Supreme Court in *Yorktowne* determined that such pallets were wrapping supplies and noted that in describing the pallets the court held that the pallets “were in effect ‘nonreturnable containers’ or ‘cartons.’” 231 A.2d at 289.

The court indicated that the term “container” was not defined in the statute or in the regulations. As a result, the court determined that it had to construe the word according to its plain meaning and common usage under Section 1903(a) of the Statutory Construction Act of 1972. 1 Pa. C.S. § 1903(a). The dictionary definition of container is “a receptacle (as a box or jar) or a formed or flexible covering for a packing or shipment of articles, goods or commodities” with the word “contain” meaning “to hold within.” The court concluded that the wooden pallets by themselves were merely frames, they were neither receptacles nor coverings for the products. The court distinguished *Yorktowne* as that case dealt with whether the purchase of lumber, nails, and metal bands taken together were subject to tax. Because this case only dealt with the wooden pallets themselves, the court indicated that such pallets were only part of the containers and considered wrapping supplies and tax exempt under the Code.