



STATE BOARD OF EQUALIZATION

March 11, 1959

Attention: X-----

Re: X-----

Gentlemen:

We have considered the information presented at the preliminary hearing in support of the petitions for redetermination filed on behalf of the above taxpayers. It is our understanding that the only question involved in each of the above matters is whether certain sales of ice to [X] were exempt from tax under Section 6359.5 of the Sales and Use Tax Law.

The facts concerning the use of the ice, as presented at the preliminary hearing and in petitions for redetermination are as follows:

[X] is engaged in the business of slaughtering, packing, and selling poultry in interstate and intrastate commerce. The poultry is brought to [X] plant where it is slaughtered, cleaned, eviscerated, packed, sharp-frozen and placed in cold storage until the poultry is shipped. It is conceded that ice used in connection with poultry shipped intrastate is not exempt under Section 6359.5, but you contend that the exemption applies with respect to ice used in connection with turkeys, which are eventually shipped in interstate commerce.

We understand that approximately 50% of the ice sales considered taxable in the audit are conceded to be taxable. The exact amount has not been determined.

The processing procedure required by the Department of Agriculture under its "Regulations Governing the Inspection of Poultry and Poultry Products," 7 CFR Pt. 81, effective May 1, 1958, is followed by [X]. From the information given, it appears that [X]'s processing procedure during the audit period and prior to the effective date of the Department of Agriculture regulations was substantially the same as that now being followed.

The birds are delivered to [X] alive. They are slaughtered, cleaned, inspected, eviscerated, washed, graded and packed in cooling tanks. The ice in question is used in these tanks. The U.S.D.A. regulations require that the birds remain in the ice for a minimum of eight hours, or until the internal temperature is reduced to at least 40 degrees F. Thereafter the birds are removed from the ice and put on a drip line to dry. They remain on the drip line for a minimum of 19 minutes, but, in the process used by [X] approximately 30 minutes. The drip line conveys the birds into the packing room, at which point they are weighed and put into plastic

bags on which is marked the weight, sex, and grade of each bird together with the U.S.D.A. inspection stamp. The birds which are to be shipped in interstate commerce are put into master packages containing two or more. The birds are then sharp-frozen and stored until shipment, which may be from one to 120 days after freezing.

While the cooling of the birds prior to packaging and freezing is now required by U.S.D.A. regulations, the reason for this precooling is to lower the body temperature of the birds so that they may be frozen solid. It is a necessary prelude to packing because, if a bird is frozen while warm, the interior may not freeze completely and there may be spoilage.

The ice in question was purchased by [X] from the various taxpayer under resale certificates. In reporting for sales tax purposes, each taxpayer claimed these sales as a deduction from gross receipts. This deduction was disallowed in the audits.

It is your contention that the ice used in the cooling tanks is exempt from tax under Section 6359.5 to the extent that the birds cooled in those tanks are shipped in interstate commerce.

Section 6359.5 provides as follows:

“As incidental to the exemption provided for in Section 6359, there are exempted from the taxes imposed by this part, the gross receipts from the sale of and the storage, use, or other consumption in this State of ice or dry ice used or employed in packing and shipping or transporting food products for human consumption between a point or points within and a point or points without this State.”

You contend that:

1. Since 6359.5 by its terms is incidental to the exemption under 6359, ice used in connection with storage of food products should be considered as exempt.
2. The ice used in the cooling tanks is used or employed in the packing of the birds and not in the processing, and that the processing of the birds is complete prior to the time they are placed in the tanks as is indicated by U.S.D.A. Regulation 81.50 (a) which provides in part as follows:

“All poultry that is prepared or processed in the official establishment shall be cooled immediately after processing so that the internal temperature is reduced to 40 degrees F or less...”

From the provision, you conclude, it is apparent that the processing must be completed before the poultry is placed in the cooling tanks and, therefore, the cooling must be a part of the packaging.

The exemption contained in Section 6359.5 must be considered in the light of the well-established rule that exemptions from taxes are to be strictly construed against the taxpayer. Good Humor Company vs. State Board of Equalization, 152 Cal. App. 2d 873, 879. The exemption contained in Section 6359.5 is for ice used or employed in “packing and shipping or transporting food products” under certain conditions. The exemption must be limited by its terms, and, accordingly, cannot be considered as exempting ice used in the storage of food products.

In its broadest meaning, the word “packing” could include all steps in the preparation of the article which is packaged. But in Section 6359.5, the Legislature used the word in a narrower sense. This is apparent from the joining of “shipping or transporting” with “packing” by the conjunction “and”. If the broad meaning were intended, the disjunctive “or” would have been used. Thus, the exemption applies to ice used in “packing and shipping”, and it is limited to ice used in connection with both packing and shipping; where, as here, the ice is used and thereafter something remains to be done to the product prior to the shipping, the exemption is inapplicable.

For foregoing reasons, we shall recommend to the Board that the tax be redetermined without adjustment. If you disagree with the conclusions and desire an oral hearing before the Board, please advise us and we shall schedule the petitions for such a hearing.

Very truly yours,

John H. Murray
Associate Tax Counsel

JHM:o'b

cc: Fresno – Administrator