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**STATE BOARD OF EQUALIZATION**

April 16, 1975

Mr. W. A. N---, President  
S--- A--- of C---  
XXX --- --- Blvd., Suite XXX-X  
--- ---, California XXXXX

Dear Mr. N---

Mr. Nunes asked that I respond to your letter of March 17, 1975 concerning the taxability of your sales of live bait.

We understand that commercial party boat fishermen purchase live the following forage fish:

1. Anchovies
2. Squid
3. Spanish Mackerel
4. Tom Cod (Kingfish)
5. Herring
6. Queenfish
7. Smelt
8. Grunion
9. Pompano
10. Various Perch
11. Sardines

The typical boat will carry from 1,000 to 50,000 of these fish in its circulating sea water tanks. The sea water is changed by pumps about every six to seven minutes to keep the forage fish alive. These fish are used by the captain for "chumming". Chumming is throwing thousands of these forage fish in the sea to attract the larger fish.

Apparently, it is your feeling that the sale of these fish to commercial deep sea fishermen should be exempt under Section 6359.

For the reasons more fully set forth below, we must respectfully disagree with this conclusion. The pertinent portion of Section 6359 provides:

“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 food products for human consumption.” (Emphasis added.)

The forage fish that you purchase are not purchased as food for human consumption. On the contrary, they are purchased to attract the larger fish which are caught and eaten. Accordingly, since the fish in question are not purchased for human consumption, Section 6359 does not provide any basis to exempt the purchase of these fish.

However, I do believe the particular fish that you purchase are nevertheless exempt under another section of the Sales and Use Tax Law; namely, Section 6358(a). This section provides:

“There are exempted from the taxes imposed by this part the gross receipts from sales of and the storage, use, or other consumption of:

“(a) any form of animal life of a kind the products of which ordinarily constitute food for human consumption.”

In checking with the California Department of Fish and Game, a Mr. E. S--- of the Marine Resources Branch stated that the listed forage fish are of a kind of animal life which are ordinarily used for food for human consumption. Accordingly, it is our opinion that the commercial deep sea fisherman who purchases these forage fish live may purchase them without the payment of sales or use tax.

It should be noted that the foregoing conclusion only applies to the listed forage fish and only in the case when they are purchased live.

Very truly yours,

Glenn L. Rigby  
Tax Counsel



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Sales tax does not apply to the sale of the following fish, mollusk, and crustaceans, when sold alive. These animals are animals of a kind the products of which ordinarily constitute food for human consumption. The sales are exempt under Section 6358(a) even though the animals may be used for bait by deep-sea fishermen. Sales of living animals for bait purposes may qualify as sales of living animals “the product of which ordinarily constitute food for human consumption” under Section 6358, even though the sales do not qualify as sales of food products for human consumption under section 6359. Section 6358 is an exemption for certain living animals. Section 6359 is an exemption for food to be consumed by humans.

GJJ 2/6/92