



STATE BOARD OF EQUALIZATION

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November 13, 1995

BURTON W. OLIVER
Executive Director

Mr. & Mrs. P--- and E--- R---
 P---'s Pet Shop, Inc.
 XXXX --- ---
 --- ---, CA XXXXX

Re: Sales of Animal Feed
SR -- XX XXXXX

Dear Mr. & Mrs. R---:

This is in response to your letter dated September 25, 1995, in which you made several inquiries regarding the sale of animal feed.

You state that your business, P---'s Pet Shop Inc., which is open to the public, sells a variety of domesticated animals and pet products, including rabbit and chicken feed, to the general public. Your inquiries were generated by a customer who objected to the imposition of sales tax on rabbit pellets purchased as feed for a pet dwarf rabbit. Your specific inquiries, which have been renumbered, are:

"[1] Is there a list of animals the State Board of Equalization considers 'food animals'?

"[2] Is the sale of any type of animal feed used for what is normally considered 'food animals' exempt from sales tax?

"[3] If the animal feed for 'food animals' is exempt, is the sale of the animal itself such as rabbits, chickens etc. exempt even though they may be purchased as domestic pets?

"[4] When is the retailer of animal feed required to obtain a 'feed exemption certificate' from the customer such as the one mentioned in Regulation 1587?

"5) Does the quantity of feed sold affect the exemption, for example are sales of bulk quantities presumed to be exempt while individual smaller packages are not?

"6) If a customer provides the retailer with an exemption certificate, is the retailer relieved of the sales tax liability on the transaction?

"7) If the [Regulation] 1587 exemption is available to retailers, how does the retailer prove to the State Board of Equalization, upon audit, that the exempt sales of animal feed were made?"

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, use tax applies to the use of tangible personal property purchased from a retailer for use in California, unless the use is specifically exempt from tax. (Rev. & Tax. Code §§ 6201, 6401.) Revenue and Taxation Code section 6358 exempts from sales and use tax the gross receipts from the sale of "any form of animal life of a kind the products of which ordinarily constitute food for human consumption" and "[f]eed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or are to be sold in the regular course of business."

You have asked for a listing of animals that the Board Considers to be "food animals." Regulation 1587 (copy enclosed) explains that "animal life of a kind the products of which ordinarily constitute food for human consumption" includes "cattle, sheep, swine, baby chicks, hatching eggs, fish and bees." Board of Equalization Tax Tip Pamphlet 66, entitled "Retail Feed and Farm Supply Stores" (copy enclosed), additionally lists chickens, game birds, turkeys and rabbits as animals considered by the Board to be "food animals." While these lists are not all inclusive, they provide examples of animals typically considered to be "of a kind the products of which ordinarily constitute food for human consumption." If you have a question about a particular animal not included in the list above, please write again and identify the specific animal about which you inquire.

The remainder of your inquiries concern the application of sales and use tax on sales of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption. As explained above, section 6358(b) specifically provides that "tax does not apply to sales of feed for food animals." This is true even if the feed is purchased for animals which ordinarily constitute food for human consumption but are kept for other purposes such as laboratory animals or domestic pets. This is illustrated by Business Taxes Law Guide (BTLG) Annotation 110.1070 (7/21/80) in which it was determined that:

"[t]he sale of feed for racing pigeons is exempt from tax because pigeons (squab) are animals of a kind the products of which ordinarily constitute food for human consumption."

Thus, so long as the feed is sold for "any form of animal life of a kind the products of which ordinarily constitute food for human consumption," the sale will not be subject to sales or use tax regardless of whether or not the animal life or its products are actually used as food for human consumption.

In the third inquiry you ask whether sales of "food animals," such as rabbits or chickens, are eligible for the exemption if the animals are kept as domestic pets. BTLG Annotation 110.0180 (10/11/50) explains that sales of rabbits are tax exempt even though used for laboratory purposes. This conclusion was based on the fact that "rabbits are animals of a kind the products of which ordinarily constitute food for human consumption.." Similarly, so long as you sell an "animal of a kind the products of which ordinarily constitute food for human consumption," the sale will not be subject to sales or use tax regardless of whether or not the animal or its products are actually used as food for human consumption.

In response to the fourth inquiry, Regulation 1587(c)(1) explains that sellers of feed should obtain feed exemption certificates with respect to sales of feed that are customarily fed to both food and non-food animals (e.g., horses, dogs, cats, hamsters, tropical fish). This regulation states that it is not necessary to obtain a feed exemption certificate under the following circumstances:

"with respect to sales in small units (two standard sacks of grain or less and/or four bales of hay or less) of feed of a kind customarily used either for food production or other purposes (feeding work stock), or with respect to sales of feed that is specifically labeled by the manufacturer [as feed] for food animals."

The underlying rationale of this provision is the rebuttable presumption that such sales of feed products will be used in the production of meat, dairy or poultry products for human consumption. Thus, in response to your fifth inquiry, sales of bulk quantities of feed specifically labeled by the manufacturer as feed for food animals are not required to be supported with a feed certificate exemption in order to be eligible for the exemption provided under section 6358(b). However, sales or use tax applies to sales of feed of a type customarily used for both feed and non-feed animals unless the sales either qualify as "small units," as defined, or are supported by feed exemption certificates.

Regulation 1587(c)(1) includes the suggested language that should be contained in feed exemption certificate. Exemption certificates are valid only if complete, timely, and taken in good faith. For example, a feed exemption certificate issued for the purchase of large quantities of feed of a type normally used for both food and non-food animals would not rebut the presumption that the sale was not subject to sales or use tax, if the seller knew that the feed was

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to be fed to the customer's race horses. Under these circumstances, the seller would not be regarded as accepting such a certificate in good faith. Your acceptance, in good faith, and retention of a timely filed feed exemption certificate will serve as evidence that the purchase was made in accordance with Regulation 1587.

If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Staff Counsel

PHJ:cl

Enclosures (Regulation 1587 & Pamphlet #66)

cc: --- --- District Administrator