

M e m o r a n d u m**110.0670**

To: Sacramento Auditing (CO)

Date: April 1, 1986

From: Headquarters - Legal (RLD)

Subject: A--- L---

SR -- XX-XXXXXX

This is in reply to your February 13, 1986 memorandum regarding the application of sales tax to sales of Ensilo-Mix.

Ensilo-Mix is produced by [A], Inc. the product brochure you sent for our review states that Ensilo-Mix ingredients promote bacterial action to get fermentation off to a quicker start. The ingredients make fermentation more efficient when worked on by bacteria. The brochure also states that Ensilo-Mix treated silage reduces butyric "stink" acid production, thereby improving aroma and palatability of the silage. The Ensilo-Mix also enhances the production of propionic acid to afford stability, assure longer bunk life and reduce secondary fermentation. Given this information, you asked whether the sale of Ensilo-Mix is exempt when purchased for use on silage for feed for animals of a kind the products of which constitute food for human consumption.

You also sent copies of a July 5, 1950 opinion by Tax Counsel R. G. Hamlin and a March 26, 1981 opinion by me which you believe to be contradictory. The 1950 opinion was the backup correspondence for Business Taxes Law Guide Annotation 110.1260, regarding sales of the product VHC-9, a crop preservative chemical. The annotation provides:

“‘VHC-9’ and similar products sold for use in preventing the growth of bacteria and mold and the prevention of heat during curing of hay are regarded as sold for a purpose other than resale and are subject to tax although the cured hay may be sold.”

Mr. Hamlin based his opinion on information received from the Department of Agriculture that the curing or drying of the hay was complete within several weeks, and the beneficial consumption of the VHC-9 occurred within that period. The sale of the product was for a purpose other than resale; therefore, tax applied to the sale.

My opinion concerned the question of whether or not the product, Silo-Guard, qualified under Sales and Use Tax Regulation 1587 as an “ingredient of a product which would constitute a feed were the product itself sold.” The quoted portion of Regulation 1587 was added in 1968 and was not an issue in Mr. Hamlin’s opinion which concerned sales for resale.

I discussed the product, Ensilo-Mix, with Mr. A--- B---, a Loomix representative who helped develop Ensilo-Mix. Mr. B--- informed me that, the ingredients in Ensilo-Mix are identical to those of a former formula of Silo-Guard. The present Silo-Guard has two additional ingredients. Another product, Silage Mate, is also similar. Mr. B--- stated that portions of the Ensilo-Mix, Silo-Guard, and Silage Mate remain on the silage when consumed by the livestock. We believe that such is sufficient for the products to be considered as an ingredient of the silage for purposes of the regulation.

Accordingly, we believe that sales of Silo-Guard, Ensilo-Mix, and Silage Mate are exempt from sales tax when sold to be used as an ingredient of products which are feed for any form of animal life the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

We hope this answers your question; however, if you need further information, feel free to write again.

RLD:sr