

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

**110.0710**

To : Mr. Vic Anderson  
Supv. Aud. Eval. & Plan. Sec.  
(MIC:40)

Date: November 19, 1997

From : John L. Waid  
Senior Tax Counsel

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Subject: S--- S--- F--- California LLC  
[No Permit Number]  
Liquid Oxygen to Aerate Water

I am responding to your memorandum to Assistant Chief Counsel Gary J. Jugum in which you asked him to review a draft letter written by Senior Tax Auditor James C. Kuhl to the taxpayer. S--- S--- F--- (“S---”) raises fish to be sold to the food service industry. Since the density of fish in its ponds is too great for them to get enough oxygen from the water naturally, S--- buys liquid oxygen and adds it to the water. S--- argues that its purchase of the oxygen is exempt from tax under Regulation 1587.

As the amendments to Regulation 1587 to incorporate the recent statutory changes have not yet been approved by OAL, the proper analysis is under the applicable statute, Section 6358.4 (Stats. 1995, Ch. 694), rather than the regulation. We do agree with Mr. Kuhl’s conclusion that sales of liquid oxygen for this purpose are subject to tax, because liquid oxygen is not a “drug” or “medicine” under Section 6358.4 as it is not used for the prevention or control of disease.

JLW:sr