



STATE BOARD OF EQUALIZATION

May 4, 1971

Re:

Dear Mr.

This is in reply to your letter of March 29, 1970.

We understand that in addition to selling bare root seedlings you offer a growing service whereby your customer furnishes the seed and you plant these seeds, grow the seedling, and deliver to the customer for a growing fee. A question has arisen as to whether the growing fee is subject to tax under the Sales and Use Tax Law.

In our opinion tax does not apply to the growing fee charged by you. This case is similar to a case where a person maintains a horse boarding ranch, charging the owner of the horse a boarding fee. We have taken the position that such boarding fees are not subject to the tax. [California Tax Service Annotation 1071.05, August 9, 1965.]

Very truly yours,

Gary J. Jugum
Tax Counsel

GJJ:lt

Bc: Santa Rosa – Dist. Admin.
Hdqrs. – Audit Eval. & Plan

M e m o r a n d u m**295.0260**

To: Van Nuys – Auditing (AJB)

Date: October 19, 1973

From: Headquarters – Tax Counsel (GLR)

Subject:

This is a follow-up to my telephone conversation concerning your letter to --- of September 13, 1973. As I indicated there was a question in my mind concerning the conclusion set forth in the last paragraph of your letter regarding the taxability of the so-called maintenance charges.

It is our opinion that under the unique facts of this case, i.e., the trees in question were complete from a nursery standpoint and the only reason for the maintenance was due to the predicament of the buyer, the maintenance charges are not subject to tax. It seems to us that the purchaser contracted to buy a tree of a certain age and it was only through his failure to have the irrigation systems in that he could not take delivery at the time indicated. To our way of thinking we believe the question to be asked is what is the purchaser has contracted to buy a two-year-old tree and when he is to take delivery he finds it impossible to do so, i.e., because of the lack of field preparation, we should conclude that the so-called additional optional maintenance services are not part of the sale of the two-year-old tree. Of course any charges made by the nursery for growing the tree to its mature state, i.e., two years in the example, would be regarded as a service that is part of the sale.

If in the future you get any other questions in this area, please let us know.

GLR:lb

cc: Mr. Donald Hennessy