

M e m o r a n d u m**440.1894**

To: Mr. Dennis Fox – MIC:92

Date: May 31, 1996

From: Gary J. Jugum
Assistant Chief Counsel

Subject: Oak Barrels: Regulation 1525

You have asked us why the recent amendment to Regulation 1525 in regard to new wine barrels was given retroactive effect and not applied on a prospective basis only.

The reason is that the factual record which supported the exemption was equally valid for earlier periods as well as future periods. Indeed, the submission which was used to justify the change as "necessary" under OAL requirements was a submission made by a taxpayer in regard to a pending petition for redetermination.

The State Board of Equalization cannot create a sales tax exemption. This is a legislative function which rests exclusively with the California Legislature. The members of Board had determined to amend Regulation 1525 to recognize the exemption in question based on existing law. The factual information which the staff used to support the exemption was contained in a submission made by ---- Wineries to the Board's Appeals Unit by letter dated September 28, 1995. The Appeals Unit was reviewing a determination issued to the taxpayer for the period October 1, 1990 through December 31, 1993. The materials submitted support the conclusion of the Board, that new oak wine barrels are purchased primarily for the purpose of incorporating oak into wine, and not as containers for aging wine. There was no basis for distinguishing this earlier period from future periods on a factual basis. There had been no change in industry practices. Staff was prepared to accept a recommendation from the Appeals Unit that the determination be canceled with respect to this item, based on the submission in question.

We note that the Decision and Recommendation of the Appeals attorney was not actually mailed to the taxpayer in that case until on or about May 23, 1996. This matter will be scheduled for Board approval in due course. The account number is SY -- XX-XXXXXX-010.

GJJ:sr