



505.0360

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001

TELEPHONE (916) 445-8485

April 25, 1989

REDACTED TEXT

Dear REDACTED TEXT:

Your March 1, 1989 letter to Tax Counsel, David Levine, has been referred to the undersigned for reply. You have requested an opinion concerning whether all sales of tangible personal property to the Kiwifruit Administrative Committee are exempt from sales tax.

Effective October 12, 1984, Marketing Order No. 920, issued by the United States Department of Agriculture, authorized the Kiwifruit Administrative Committee to administer the marketing order for the California Kiwifruit Industry.

Except as specifically exempted by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this state. (Rev. & Tax. Code § 6051). Revenue and Taxation Code Section 6381 exempts from sales tax the gross receipts from the sale of any tangible personal property to unincorporated agencies and instrumentalities of the United States.

It is our opinion that the Kiwifruit Administrative Committee is an unincorporated agency or instrumentality of the United States. Accordingly, sales of tangible personal property to the Kiwifruit Administrative Committee are exempt from the imposition of tax. (See Business Taxes Law Guide Annotation 505.0360 (5/23/74).) This subject is discussed in Regulation 1614, a copy of which is enclosed. Subdivision (g) sets forth the documentation required for a seller to establish that a sale is exempt as a sale to the United States or its instrumentalities.

If you should have any further questions, please feel free to write again.

Very truly yours,

E. L. Sorensen, Jr.
Senior Tax Counsel

bc: Sacramento District Administrator
Mr. Donald J. Hennessy (Annotation 505.0360, which covers marketing orders, should be amended to include the Kiwifruit Administrative Committee.



505.0360

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

(916) 445-6450

December 4, 1990

REDACTED TEXT

Dear REDACTED TEXT:

This is in reply to your October 16, 1990 letter regarding the application of sales tax to various marketing committees. You note the following facts:

“The REDACTED TEXT is given the task of administering the seventeen marketing orders which are in operation in California and Hawaii. The Committees include: Valencia and naval oranges, lemons, nectarines, peaches, plums, pears, kiwifruit, grapes grown in the Coachella valley, Tokay grapes, papayas grown in Hawaii, olives, almonds, walnuts, dates, raisins and prunes. Most of the administrative committees have indicated that, at one time or another, they have experienced difficulty in purchasing items and explaining why the committee is tax-exempt....”

As you noted, on April 25, 1989, this office provided an opinion to the REDACTED TEXT which concluded that sales to the committee are exempt from California sales tax pursuant to Revenue and Taxation Code section 6381. Subdivision (a) of section 6381 exempts from sales tax the gross receipts from the sale of any tangible personal property to the United States and its unincorporated agencies and instrumentalities.

You asked that we provide a similar letter concerning the committees you listed above. We have examined Title 7 of the Code of Federal Regulations (7 CFR) and have determined that the following committees are unincorporated instrumentalities of the United States such that sales to the listed committees are exempt from sales tax. Following the name of each committee, we have listed the applicable CFR section which creates that committee:

<u>Committee</u>	<u>Section</u>
Navel Orange Administrative Committee	907.20
Valencia Orange Administrative Committee	908.20
Lemon Administrative Committee	910.20
Nectarine Administrative Committee	916.20
Pear Commodity Committee	917.20
Peach Commodity Committee	917.20
Plum Commodity Committee	917.20
Kiwifruit Administrative Committee	920.20

<u>Committee</u>	<u>Section</u>
California Desert Grape Administrative Committee	925.20
Tokay Industry Committee	926.20
Winter Pear Control Committee	927.20
California Olive Committee	932.25
Oregon-California Potato Committee	947.25
Almond Board of California	981.30
Walnut Marketing Board	984.35
California Date Administrative Committee	987.16
Raisin Administrative Committee	989.23
Prune Marketing Committee	993.24

Enclosed is a copy of Sales and Use Tax Regulation 1614, Sales to the United States and Its Instrumentalities. Subdivision (g) of the regulation provides the documentation required for a seller to establish that a sale to one of the entities is exempt as a sale to the United States or its instrumentalities.

You also noted that you understand that the administrative committees are exempt from taxation by each county on the property they own. I am sending a copy of your letter to Mr. Richard H. Ochsner, Assistant Chief Counsel, State Board of Equalization Legal Division, Property Tax Section, for consideration.

If you have further questions regarding the application of the sales tax, feel free to write to this office again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.

bc: Mr. John Abbot – I suggest that Annotation 505.0360 be amended to include only these seventeen committees. These are the only committees pertaining to California in the CFR. According to REDACTED TEXT some of them are successors to committees listed in the annotation, and the REDACTED TEXT and REDACTED TEXT have been terminated.

REDACTED TEXT is not created pursuant to federal regulation but is a state board created pursuant to Food and Agriculture Code section 58841. The back-up correspondence to the annotation contains a list prepared by a representative of the U. S. Department of Agriculture that notes that the REDACTED TEXT is “part of the Federal order” but that it is a state marketing order body. I did not find a reference to the REDACTED TEXT in 7 CFR 989. We should notify the REDACTED TEXT that we are rescinding the annotation as to them in order to comply with Revenue and Taxation Code section 6596.

505.0360

Memorandum

To: Ms. Lori J. Mayoya
Audit Evaluation & Planning Section (MIC:40)

Date: May 17, 1994

From: Sharon Jarvis
Staff Counsel

Subject: Mushroom Council Designation as a Federal Instrumentality

In your memorandum of March 9, 1994 you ask whether the Mushroom Council, authorized by the Mushroom Promotion, Research, and Consumer Information Act of 1990, is an instrumentality of the United States for Sales and Use Tax purposes.

Discussion:

Gross receipts from the sale of tangible personal property to an unincorporated instrumentality of the United States or to an incorporated instrumentality wholly owned by the United States are exempt from sales tax. (Rev. & Tax. Code § 6381.) The United States Supreme Court has concluded that an entity is an instrumentality exempt from state taxes only when that entity is so closely connected to the federal government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned. (United States v. Mexico (1981) 455 U.S. 720, 735; Standard Oil Co. of Cal. v. Johnson (1941) 316 U.S. 481; see also United States v. California (1993) 507 U.S. REDACTED TEXT [123 L.Ed.2d 528, 538; 113 S.Ct. 1748, REDACTED TEXT].) Therefore, the issue here is whether the Mushroom Council can realistically be considered an entity independent of the United States. If so, a tax on it cannot be viewed as a tax on the United States itself (see United States v. Mexico, *supra*, at p. 738), and the sales tax is properly applied. If, on the other hand, the Mushroom Council cannot realistically be viewed as an entity separate and independent of the United States, it is a federal instrumentality and exempt from sales tax.

If the United States Supreme Court has determined that a particular entity cannot be viewed as independent from the United States, then we are, of course, bound by that determination. If the Court or some other appropriate authority has not made a determination with regard to a particular entity, we must make that determination. To do so, we must analyze all the factual circumstances of that entity's relationship to the United States.

The Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. §§ 6101-6112) defines the Mushroom Council's relationship to the United States. The Act declares the policy of Congress to authorize the development of a program to strengthen, maintain and expand the mushroom market. To effectuate this policy, the Act provides for

the establishment of a Mushroom Council, to be created by an order of the United States Secretary of Agriculture. The Act provides that by order the Secretary appoints the Mushroom Council, composed of mushroom producers and importers. The Act provides that the Council's powers and duties are defined by the Secretary's order, and include the duty to submit budgets, plans and projects of mushroom promotion, research, consumer information, and industry information to the Secretary for approval, and to implement the plans or projects only with that approval.

The Act provides that mushroom producers and importers shall be assessed to pay for the implementation and administrative expenses of the Act, including the administrative costs incurred by the Secretary in administering and implementing the Act.

The Act provides that the Secretary may issue any regulations necessary to carry out the Act; that the Secretary may make any investigation considered necessary for the effective administration of the Act; and that first handlers and importers of mushrooms must maintain certain books and records which must be available to the Secretary as needed to administer and enforce the Act, its orders or regulations. The Act also provides for civil and criminal penalties for persons violating any order or regulation issued by the Secretary under the Act.

Through the Act, Congress has effectuated the creation and oversight of the Mushroom Council by the United States Secretary of Agriculture. All of the Council's projects and plans, as well as its budget, are subject to the Secretary's review and approval. This degree of oversight and involvement by the United States Secretary of Agriculture in the creation and functioning of the Mushroom Council shows that the Mushroom Council is so closely related to the United States that it is a federal instrumentality. The Mushroom Council cannot be viewed as an entity separate from the United States when all of its activities are subject to the Secretary's scrutiny and approval. We conclude that the Mushroom Council is an instrumentality of the United States for Sales and Use Tax purposes.

SJ:es