



505.0600

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.

505.0600**Memorandum**

To: Mr. Maywood Wong
Business Taxes Compliance Supervisor
Santa Ana District Office (EA)

Date: April 19, 2005

From: Carole F. Ruward
Tax Counsel

Telephone: (916) 322-3682
CalNet: 8-492-3682

Subject: Tax-Exempt Status of Hass Avocado Commission and
California Avocado Commission

This memorandum is in response to your e-mail request dated January 20, 2005, regarding the tax-exempt status of the Hass Avocado Commission and the California Avocado Commission. On January 14, 2005, taxpayer REDACTED TEXT submitted to you a letter from the United States Department of Agriculture (USDA), dated March 23, 2004, stating that both organizations were exempt from all taxes, including "sales taxes." You have requested clarification on whether transactions involving sales to either organization are exempt from state sales and use taxes.

As you know, 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.) Unless federal law so provides, this exemption also extends to tax on the storage, use, or other consumption of tangible personal property by the U.S. Government or its agencies and instrumentalities. (Cal. Code Regs., tit. 18, § 1614, subd. (a)(4).) 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. New Mexico* (1981) 455 U.S. 720, 735.)

The Hass Avocado Board (Hass Board) is an agricultural research and promotion board authorized by the Hass Avocado Promotion, Research, and Information Act of 2000 (Act). (7 U.S.C. §§ 7801 – 7813.) This enabling legislation not only creates and empowers the Hass Board, it also mandates an extensive degree of oversight, involvement, and approval of the Hass Board's plans, budgets, and activities by the United States Secretary of Agriculture. (See also 17 C.F.R. §§ 1219.1 – 1219.202.) Thus, the Hass Board is an instrumentality of the United States for Sales and Use Tax purposes.

The California Avocado Commission (Commission), on the other hand, is a corporate instrumentality of the State of California (Food & Agr. Code, §§ 67051 & 67056), authorized and governed by sections 67001 through 67144 of the Food and Agriculture Code. Its activities are not subject to the approval or control of any federal official or agency. Therefore, it is not an

instrumentality of the U.S. Government, and gross receipts from the sale of tangible personal property to the Commission are subject to tax unless another exemption applies.

In addition, I inquired with REDACTED TEXT of the USDA's Research and Promotion Branch of Fruit and Vegetables Programs and the signatory of the March 23, 2004, letter. She confirmed that the March 23, 2004, letter erred in stating that the California Avocado Commission was authorized by the Act and was "also exempt from taxation." She provided me with a "corrected letter" dated February 14, 2005 (copy enclosed), stating that the Hass Avocado Board is authorized by the Act and is exempt from all taxation, including sales taxes. The corrected letter makes no reference to the California Avocado Commission.

I hope this provides you with the information you requested.

CFR/ds

Enclosure: February 14, 2005, Letter From REDACTED TEXT of the USDA

cc: Mr. Peter Horton (MIC:50)