

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6366

March 1, 1979

Mr. E--- A. E---
Public Accountant
XXX --- --- Avenue
---, CA XXXXX

Dear Mr. E---:

Your letter to Mr. Gregg dated January 5, 1978 has been referred to the Board's legal office for response. In this letter you asked that an opinion be rendered on whether California sales tax is due on the entire amount of all so called seed purchases and care agreements.

You have stated that avocado growers in your area generally request that the nursery purchase the avocado seeds for a certain price plus sales tax. The growers also request that for a certain price, the nursery maintain, care and supply the materials for these seeds until such time as they are ready to plant them in their own groves. The growers are invoiced for the seeds, plus sales tax and they are invoice for the maintaining of the seeds which include the costs for labor, watering, containers, sawdust, mulch, fertilizer and other supplies. The growers may pay a certain sum each month for the maintenance of the seeds or they may make one large payment.

Specifically, you have inquired whether sales tax is due on the maintenance portion of the agreement and if it is, when the tax should be paid.

It is the position of the State Board of Equalization that where the seller of the seeds or seedlings also contracts with the purchaser to perform the growing services, the gross receipts from the growing services also are subject to the tax even though the transactions are embodied in separate agreements. This tax should be reported by the seller in the tax reporting period in which the trees are delivered to the grower.

Revenue and Taxation Code Section 6012(b)(1) provides that the total amount of the sale includes "any services that are a part of the sale." Therefore, while as a general rule services are not subject to sales tax, services that are a part of the sale are taxable. In the above mentioned situation, the growers are in actuality purchasing transplantable avocado trees from the nursery, not merely

seeds. Consequently the services performed by the nurseries are an integral part of the sale and are subject to sales tax.

This opinion is not altered by the fact that the grower may enter into two separate contracts with the nursery (i.e., one contract for the sale of the seeds, the second for the growing services).

If you have any further questions regarding this analysis, please contact the undersigned.

Very truly yours,

Susan M. Wengel
Legal Counsel

SMW/at