



STATE BOARD OF EQUALIZATION

June 24, 1953

[J]
P. O. Box XXXX
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Attention: [Q]
Treasurer

X-XXX

Gentlemen:

A review of your file indicates that we failed to answer your letter of November 17 for which error we apologize. We assure you that we will answer any further inquiries more promptly.

In that letter you inquired concerning the taxable or exempt status of the following items:

Hawaiian punch
Marshmallow topping
Glace cherries, pineapple, citron, etc
Glace Fruit Cake Mix

We regard Hawaiian punch as an exempt fruit product under Sales and Use Tax Ruling 52, copy enclosed. Marshmallow topping, if sold for use as a cake frosting or for use as a topping for puddings, is also exempt under the second paragraph of section A of Ruling 52.

As indicated in the first paragraph of section B of Ruling 52, glace fruits are normally regarded as taxable confections.

However, if glace fruit is sold for use other than as a confection as for example, if it is sold for the purpose of being used in cooking a food product for human consumption, such as a fruit cake, it is our opinion that the tax is not applicable. In determining the purpose for which the glace fruit is sold, it is proper to take into consideration the type of package in which it is

sold. For example, a plain box with cooking directions on it would be evidence that the fruits were sold for use other than as a confection. A grocery store would be more likely to sell glace fruit for cooking purposes than would a candy store. On the other hand, the fact that glace fruit might be put up in a fancy gift package would be evidence that it was sold for use as a confection.

Very truly yours,

W. W. Mangels
Assistant Counsel

WWM:tj