

State of California

Board of Equalization

Memorandum

To: Mr. Juan C. Fernandez
Board Member's Office, Fourth District
MIC:78

Date: February 10, 1994

From: E. L. Sorensen, Jr.
Chief Counsel

Subject: REDACTED TEXT

This is in reply to your request that the legal staff review the position taken by Staff Counsel Elizabeth Abreu in her July 20, 1993 memorandum to REDACTED TEXT.

Ms. Abreu concluded in that memorandum that, if a control fire is set by a forest service for the specific purpose of preserving other tracts of forest for lumbering operations by destroying trees which are infested with pests, wood chips made from the stumps and other tree parts in the burnt area are waste byproducts from forest products operations for purposes of Revenue and Taxation Code section 6358.1. If, however, a fire starts by lightning, accident or arson, the fire is not part of the forest products operations, and the exemption would not apply to the resulting sale of wood chips.

“Waste byproducts” is not defined in Section 6358.1 nor elsewhere in the Revenue and Taxation Code. Those words must then be given the meaning they bear in ordinary use. (Union Oil Company v. State Board of Equalization (1990) 224 Cal.App.3rd. 665.) A “byproduct” is anything produced in the course of making another thing; secondary or incidental product or result. See Webster's New World Dictionary, Third College Edition, at page 192. One could conclude that a forest fire, even intentionally set, is not the making of something such that the burnt wood is within the definition of byproduct. However, we believe it is more reasonable to consider that the growing of the trees is necessary to make the timber and that the “forest products operation” includes the intentional setting of fires to promote the healthy growth of trees. However, we do not believe that a natural forest fire, an accidental forest fire, nor a forest fire set by arson is produced in the course of “making another thing” such that the resulting burnt timber is a “byproduct”.

You also asked for our opinion as to the application of sales tax to the sale of wood chips under the following facts presented by REDACTED TEXT in her May 24, 1993 letter:

“I have a couple of clients undergoing sales tax audits. Both clients have a chipping business where they chip trees and parts of trees and send or sell the chips to REDACTED TEXT for the production of power. The chips are burned to produce electricity. The chips are burned in place of natural gas. At this point in time, any logs that are millable are sold to a lumber mill, the limbs, tops and small trees are chipped. The question has been raised as to the exemption of the chips under 6358.1 Fuel-organic products and waste byproducts...

“It was questioned whether chips are ‘waste byproducts.’ This implies that there should be a primary product. At present time, logs would be the primary product. The auditor told me that the timber sales that produces income from saw log sales would qualify the chips sold as forest waste byproducts and therefore nontaxable. In some cases, these small chipping operations buy the timber to be chipped and the saw logs are brought by other logging companies...

“Another main source of trees for chipping are thinning projects. The small trees must be taken out to make room for the healthiest trees to grow to maximum size in a minimum amount of time...

“Very rarely do chippers clear a plot of land and chip every bit. The Forest Service does not allow clear cutting on U.S. land or private land. Short of clearcutting, everything that gets chipped should be considered forest waste byproducts. The intent of this law was to keep waste byproducts out of landfills. In forest logging operations, the forest waste byproducts are put into piles and burned, must the same way landfills work. By chipping any logging waste byproducts, the forest is cleaned up and the air is saved from the smoke of burning. At this time, saw logs are very valuable to the lumber mills because there are few timber sales happening. Logs good for the mill are sent to the mill. All the rest is chipped for production of electricity.

“In some cases, the chippers are hired as subcontractors to chip. As long as the chipper does not own the chipping material, it should be treated as subcontracting and not taxable for sales tax.

“During the winter months, the chippers move their equipment to the valley and chip old orchards that are being removed for replanting. This is considered agricultural waste byproducts and is not taxable for sales tax according to the auditor.”

REDACTED TEXT did not provide details of the relationship between the parties. We assume that a timber producer sells logs to mills and sells the small trees and branches to REDACTED TEXT clients who are the chippers. The chippers reduce the small trees and branches to wood chips and sell the chips to the power plant.

The issue which arises under those facts is whether tax applies either to the sale by the timber producers or by the chippers. We believe that tax would not apply to either sale under the facts we assume. The sale by the timber producer to the chipper would be a nontaxable sale for resale, and the chipper should issue a resale certificate to the timber producer. I believe there is no question that the small trees and branches are a waste byproduct of the timber producer. In that

case, we believe the chippers processing of the trees and branches to produce wood chips does not change the character of the tangible personal property from being a waste byproduct. The sale of the wood chips by the chippers to the power company to burn in its industrial facility as a fuel source in lieu of natural gas is exempt from sales tax pursuant to Revenue and Taxation Code section 6358.1.

We hope this answers your questions; if you need further information, please contact Mr. Ronald L. Dick of my staff.

ELS:RLD:plh

cc: Mr. Burton W. Oliver
Mr. Glenn Bystrom