

**M e m o r a n d u m****110.0315**

To: Santa Barbara – Auditing (BMR)

Date: November 1, 1973

From: Headquarters – Tax Counsel (GLR)

In your memo of September 26 you ask our opinion as to the taxability of sales of dairy bull and beef bull semen and artificial insemination services performed therewith. As you noted, presently there is no annotation covering this subject. However, as was pointed out to me there was such an annotation prior to the renumber project, copy enclosed. From my research I find no explanation as to why the annotation of 1953 was not included in the revised annotated material. In view of the foregoing we have considered the question raised as one of first instance.

As you are aware the only possible exemption that could be applicable is Section 6358(a). to come within the exemption the item in question must be “Any form of animal life of a kind the products of which ordinarily constitute food for human consumption.”

It is clear in reading the Encyclopedia Americana International Edition of 1973 and the text called Spermatozoen Motility that the sperm constitutes a life form of an animal. Also the product, i.e., the young after fertilization, ordinarily constitutes food for human consumption. Therefore, it is our opinion that the semen is exempt from sales and use taxes.

The annotation concerning red blood cells is distinguishable in that the blood cells, although possibly having “life”, have no products which ordinarily constitute food for human consumption.

In regard to the artificial insemination question, it is clear that such services would not be taxable since the tangible personal property itself is not subject to tax. It should be noted, however, that if the semen was a type that did not qualify under Section 6358(a), i.e., dog or horse semen, the artificial insemination would still not be taxable as it would be exempt on the theory of installing or applying the property sold.

GLR:lb  
Enclosure