



STATE BOARD OF EQUALIZATION

August 21, 1953

Taxpayer
Cupertino, California

Attention: Mr. [X]

Account No. - - XXXXX

Gentlemen:

Your letter of April 29 addressed to our San Francisco office has been referred to this office for reply.

You ask if the sales tax applies to the sale to you of fumold and ethylene oxide gas. These items are placed in packed bags of fruit to preserve the fruit.

The California sales tax applies to all retail sales of tangible personal property other than to sales which are specifically exempted. The sale to you of cartons, bags, and labels is covered by the specific exemption set forth in Ruling 49 (copy enclosed).

There is no such specific exemption applicable to fumold or ethylene oxide and sales of such items are taxable if they are retail sales. A retail sale is defined as "a sale for any purpose other than resale in the regular course of business".

We understand that fumold is placed in the fruit package for the purpose of killing mold spores which, if not killed, might develop into mold. The fumold thus has the effect of preserving the fruit, but this effect is produced by killing the spores at the time of packaging. We further understand that most of the fumold evaporates from the package before the fruit reaches the consumer and that, if this were not so, the presence of a substantial amount of fumold might have some deleterious effect on humans consuming the fruit.

Accordingly, it is our opinion that the sale to you of fumold is a sale for the purpose of use and is therefore a taxable retail sale.

Our information is that ethylene oxide gas is used in the same manner and has the same effect as fumold. Its sale, too, is thus a taxable retail sale.

Yours truly,

Bill Holden
Junior Counsel

BH:ja

cc: San Jose - Auditing