



STATE BOARD OF EQUALIZATION

Place: Sacramento
Date: July 19, 1961

To: File
From: J.D. Paulson
Re: [X]

Mr. [X], attorneys for taxpayer, appeared in my office on July 14, to present additional information to be furnished by them subsequent to a preliminary hearing held in November, 1960, regarding a petition for redetermination and a claim for refund for the taxpayer. An initial discussion was held regarding the nature of the taxpayer's operation. It was contended by Mr. [X] that Section 6421 of the Sales and Use Tax Law should apply in exonerating the taxpayer from the additional tax in as much as the taxpayer took ice exemption certificates from its customers in good faith pursuant to the provisions of Sales Tax General Bulletin 54-26.

At this point of the conference, Mr. Stetson was consulted to determine what the Board policy was with respect to this section of the law. Mr. Stetson stated that the code section had been regarded by the Board as an additional right conferred upon the State to collect tax from persons issuing fraudulent certificates, but did not limit the State's right to assert the tax against the retailer although the retailer had accepted the certificates in good faith. However, Mr. Stetson believed the matter involved policy considerations which should be discussed with Mr. Harry L. Say, Executive Secretary of the Board. Mr. Say was contacted, and a conference was set up for 3:00 p.m.

At 3:00 p.m., Messrs. [K], [C], Stetson, Say, and the undersigned held a conference regarding the entire subject matter; to wit: whether ice used in precooling grapes subsequently to be shipped in interstate commerce should be exempt from tax under Section 6359.5 of the law whether the grapes are immediately shipped interstate, or whether they are stored for a period of time prior to shipment. It was determined that a quantity of grapes are actually stored after the harvest season is over for the sole purpose of marketing them at a better price.

It was ultimately concluded by Mr. Say, and concurred in by Mr. Stetson, the taxpayer's representatives and the undersigned, that all ice used for precooling grapes to be shipped in interstate commerce is exempt from tax, whether or not the grapes are held in storage prior to shipment, provided the grapes are not processed after precooling.

In this regard, Mr. [X] stated the grapes are crated and labeled prior to being precooled, and are not repacked or further processed prior to shipment. However, it was stated that the grapes are gassed to prevent molding. Mr. Say was of the opinion that the gas operation would not constitute further processing.

It was determined that ice used for storing grapes from the end of the harvest season until date of shipment was used in a non-exempt manner and sales thereof for that purpose would be taxable. It was further decided, for administrative purposes, that ice delivered ten days after the harvest season would be presumed to be used for storage purposes.

JDP:o'b