

Memorandum

440.0523

To : Mr. Vic Anderson
Special Projects Supervisor
Planning, Evaluation and Technology Section

Date: November 29, 2000

From : David H. Levine
Tax Counsel IV

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Subject: B--- O--- Co.
SU -- XX-XXXXXX

This is in response to your memorandum dated October 6, 2000 regarding the application of tax to the sale and use of carbon dioxide used in the processing of olives. The taxpayer believes that the carbon dioxide may be purchased for resale. You explain:

“Staff agrees with the opinion of the district office concerning this use of carbon dioxide in the processing of olives. The principal purpose of the carbon dioxide is as an acidulant to reduce the pH of the olives after they are soaked in the alkali sodium hydroxide solution. The carbon dioxide is not purchased for the primary purpose of being incorporated into the olives to be sold and none actually remains in the olives after processing. What is left in the olives is salt. That is, after the carbon dioxide neutralizes the sodium hydroxide’s pH level, all that is left is the sodium. Although the formation of salt in the olive may be deemed acceptable or even desirable, it appears to be an unintended consequence of neutralizing the sodium hydroxide with the acidulant.”

Taxpayer disputes the district’s use of the term catalyst. Regardless of what you call the carbon dioxide’s use in the manufacturing process, if none of the carbon dioxide remains in the finished product, it cannot be regarded as purchased for resale. If, however, some portion of the carbon dioxide does remain in the finished product, we must then ascertain whether the primary purpose of the carbon dioxide is for use in the manufacturing process (regardless of the terminology used to describe that use) or to incorporate part or all of the carbon dioxide into the manufactured item. (*Kaiser Steel Corporation v. State Board of Equalization* (1979) 24 Cal.3d 188.)

Based on the explanations in the correspondence attached to your inquiry, and as indicated in your inquiry as quoted above, no portion of the carbon dioxide remains in the finished product. Rather, the carbon dioxide serves to lower pH during the manufacturing process. The use of the carbon dioxide also results in the production of salt, which I assume is regular table salt (NaCl) and which apparently does remain in, and is sold with, the finished product. However, not only is salt apparently not the principal purpose for the use of the carbon dioxide, it also does not comprise any of the component parts of carbon dioxide. That is, carbon dioxide is comprised of carbon and oxygen. Salt, on the other hand, is comprised of wholly different components, sodium and chloride.

The only time it is necessary to reach the principal purpose test is when the property in question has two (or more) purposes, one of which is to incorporate a component part of the subject property into the manufactured item to be sold. Since no part of the carbon dioxide is incorporated into and sold as part of the olives, the principal purpose test is not required to resolve this matter. Rather, since no part of the carbon dioxide is incorporated into the olives and sold as part thereof, the carbon dioxide cannot be purchased for resale.

I note that part of the problem in this matter may have been the district's use of the term catalyst (actually, the district said that the carbon dioxide's use was "in the nature of catalysts"). It is not required that a manufacturing aid be classified as a catalyst in order to be a manufacturing aid. In the present case, it appears that the use of carbon dioxide to create salt may be a use in the nature of a catalyst. However, since the primary purpose of the use of the carbon dioxide is as an acidulant, even if the production of salt is a desired side effect, is more accurate to characterize the use of the carbon dioxide as an acidulant and not as a catalyst. More accurate still would be to simply categorize it as a manufacturing aid, which encompasses both uses, and for sales and use tax purposes has the same ultimate result.

If you have further questions, feel free to write again.

DHL/cmm

cc: Ms. Charlotte Paliani (MIC:92)
Mr. Mark Noack (--)
Mr. Jeff McGuire (MIC:40)
Mr. James Stillwell (MIC:40)
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