



**STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)**

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Executive Director

November 8, 1994

Mr. J--- B. C---
--- & ---
XXX --- ---
Suite XXX
---, CA XXXXX

RE: [No Permit Number]
C--- F--- Institute
Sales of Fig Pollen

Dear Mr. C---:

The Office of the Member, First District, has referred your letter to him dated October 6, 1993, to the Legal Division for a response. I apologize for the delay. Resolution of this matter had to await the Board's decision in two cases in petition status at the time we received your letter.

You indicate that you represent the C--- F--- Institute, a non-profit corporation whose primary function is to promote and represent the interest of the fig industry in California. You argue that sales of pollen of the Capri fig for the purpose of use in the pollinating of the Calimyrna fig should be exempt from tax as sales for resale. You note that, although the Capri fig is inedible, the Calimyrna fig "has a special flavor that is found only in the in Calimyrna figs." You further state: "Unquestionably, the pollen from the Capri fig does become an integral part of the Calimyrna fig that is marketed as a most desirable food product." You attach to your letter a copy of a letter, commissioned by your client, and dated September 24, 1993, from Mr. J-- F. D---, Staff Research Associate IV, Pomology Department, University of California K--- A-- - Center describing the pollination process in support of your client's position.

OPINION

Section 6358 provides, in pertinent part, as follows:

"There are exempted from the taxes imposed by this part the gross receipts from sales of and the storage, use, or other consumption of:

* * *

"(c) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business."

This section is interpreted and implemented by Regulation 1588(a).

As you are aware, the Board recently considered this issue and published a Memorandum Opinion thereon. In that opinion, the Board did not adopt the "incorporation" argument. At the hearing for the taxpayer involved, expert testimony was presented to the effect that pollen was itself a plant that is regenerated annually so that the fruit can be produced. The Board thereupon found that pollen was an annual plant within the definition of Section 6358(c). We thus conclude that, although the Capri fig itself is not sold as food for human consumption, Mr. Doyle's letter shows that the Capri fig pollen is used in the production of the Calimyrna fig which is. As a result, sales of the Capri fig pollen to farmers for their consumption in the production of edible figs is exempt from tax. While Annotation 510.1260, which you discuss in your letter, is being deleted at the request of the Board, it is still our position that the pollen is not incorporated into the fruit, and sales of this pollen may not be excluded from tax as sales for resale.

I have attached a copy of the Memorandum Opinion for your ease of reference. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosure: Memorandum Opinion (June 30, 1994)

cc: Ms. Susan Wengel (MIC:85)
Mr. Glenn Bystrom (MIC:40)
Mr. Gary J. Jugum