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October 22, 2003

TIMOTHY W. BOYER
Interim Executive Director

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T--- & M---
XXXX ---- Place
---, CA XXXXX

**Re: Unidentified Taxpayer
Regulation 1533.1, *Farm Equipment and Machinery***

Dear Mr. H---:

Your June 27, 2003 e-mail regarding the application of tax on sales of certain pest control products and growing mediums has been referred to me. My response to your inquiry does not come within the provisions of Revenue and Taxation Code section 6596 since you have not identified your client and possibly all relevant facts regarding the proposed transaction. You should provide us with the identity of your client (as well as all relevant facts) in your initial correspondence to us if you wish an opinion letter coming within the provisions of section 6596.

You state:

“This question relates to the partial exemption from sales taxes of certain farm equipment and products under the State of California Sales and Use Tax regulation 1533.1:

“We would like the SBE to confirm and verify our understanding, as correct, that the term ‘producing and harvesting agricultural products’ can be interpreted to mean those PRODUCTS whose activities involve the cultivation of land or the growing, raising, or gathering of the commodities described in SIC Codes 0111 to 0291 and include, but are not limited to:

“‘Pest Control Products’ will include pesticides, insecticides, germicides, and biological beneficial insects and organisms.

“Furthermore, our understanding of the phrase ‘PRODUCTS whose activities involve the cultivation of land or the growing of commodities’ means ‘products used in the cultivation of land or the growing of commodities’ to include such

products as ‘growing mediums’ used in hydroponics’ growing systems such as rock wool materials, compost, soil, and soil amendments.

“If our understanding is not correct, please provide us with examples of the SBE’s interpretation of the above statutory language.”

We understand you to ask whether pest control products such as pesticides, insecticides, germicides, or biological beneficial insects and organisms, and growing mediums such as rock wool materials, compost, soil, or soil amendments qualify for the farm equipment and machinery partial sales and use tax exemption.

DISCUSSION

As a starting point, California imposes a sales tax on a retailer’s gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempted or excluded from taxation by statute. (Rev. & Tax Code, § 6051.) This tax is imposed on the retailer who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code, § 1656.1; Reg. 1700.) When sales tax does not apply, such as when the sale takes place outside the state, use tax is imposed on the sales price of property purchased from a retailer for the storage, use or other consumption of that property in California unless specifically exempted or excluded from taxation by statute. (Rev. & Tax. Code, §§ 6202, 6401.) This tax is imposed on the person actually storing, using, or otherwise consuming the property. (Rev. & Tax. Code, § 6202.)

Revenue and Taxation Code section 6356.5, as explained by Regulation 1533.1, provides a partial exemption from tax on the gross receipts or sales price from the sale to, or storage, use or other consumption in this state by, qualified persons of farm equipment, machinery, and parts thereof for use primarily in producing and harvesting agricultural products (hereafter “partial exemption”). In pertinent part, a qualified person is defined in subdivision (b)(6) of Regulation 1533.1, which provides that:

A “qualified person” means a person engaged in a line of business described in Codes 0111 to 0291 of the SIC Manual or performs activities described in Codes 0711 to 0783 in addition to being engaged in a line of business described in Codes 0111 to 0291.

Subdivision (b)(6) also provides that a qualified person includes any person that assists a qualified person, as defined in subdivision (b)(3), which provides that:

A “person that assists a qualified person” means a person employed by a qualified person, or engaged on a contract or fee basis to perform activities described in Major Group 07 of the SIC Manual that uses farm equipment and machinery in assisting a person engaged in a line of business described in subdivision (b)(6).

As relevant to your inquiry, Regulation 1533.1(b)(1) defines “farm equipment and machinery” as implements of husbandry, to include:

“(A) Any new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations, except where such items are intended for sale in the ordinary course of business. Such items include, but are not limited to, combines, harrows, tractor implements, agricultural heating and cooling equipment, fuel storage equipment, wind machines, handling and packing equipment and conveyors, ginning equipment, feeding, watering and waste disposal systems for livestock, incubators and equipment used for egg and poultry production, harvesting trays and bins, farm tools such as rakes and hoes, plant support equipment such as trellis systems, irrigation systems, fencing systems, milking systems, agricultural operating structures [as defined], squeeze chutes, portable panels, corrals, loading chutes, veterinary instruments, free stalls, cages and tack items such as saddles and rope.

“ . . .

“Farm equipment and machinery does not include tangible personal property primarily used in the administration, management, or marketing of a qualified person’s operation or that of another who assists a qualified person. Farm equipment and machinery also does not include tangible personal property that is, without limitation, a supply item not used in producing or harvesting agricultural products such as shop towels, cleaning agents, hand cleaners, chemicals, and articles of clothing, except clothing designed primarily to protect a commodity or to apply agricultural chemicals as described in 3 CCR 6738. . . .”

Subdivision (b)(4) and (5) adds that:

“Primarily” in “producing and harvesting agricultural products” means that the farm equipment and machinery must be used 50 percent or more of the time in those activities described in Major Groups 01, 02 and 07 of the SIC Manual. These activities include the cultivation of land or the growing, raising or gathering of the commodities described in Codes 0111 to 0291 of the SIC Manual and the integral activities described in Codes 0711 to 0783 of the SIC Manual.

In order to qualify for the partial exemption from tax, **three requirements must be met**: 1) the purchaser must be a qualified person; 2) the property must qualify as farm equipment and machinery or parts thereof; and 3) that property must be primarily used in producing and harvesting agricultural products. (Reg. 1533.1(a).) As indicated above, chemicals (i.e., a substance obtained by or used in a chemical process¹) are regarded as supply items not used in producing and harvesting agricultural products and thus do not qualify as farm equipment and machinery. (Reg. 1533.1(b)(1)(A).) Since pesticides, insecticides, and

¹ (Webster’s II New Riverside Dict. (1984) p. 123, col. 1)

germicides are chemical substances, they similarly do not qualify as farm equipment and machinery and consequently do not qualify for the partial exemption.

We also do not regard beneficial insects such as ladybugs, nematodes, or lacewings as farm equipment and machinery. These insects do not constitute a “new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations.” In particular, we interpret the type of tangible personal property subject to the partial exemption to consist of manufactured property used in agricultural operations as evidenced by the examples set forth in Regulation 1533.1(b)(1). Such items consist of combines, harrows, tractor implements, and the like. Moreover, we understand that these beneficial insects perform the type of activities commonly performed by agricultural chemicals such as pesticides. In that regard, agricultural chemicals are regarded as supply items outside the definition of farm equipment and machinery. (See Reg. 1533.1(b)(1).)

Last, while compost, soil, or soil amendments are products used in producing and harvesting agricultural products they are not tools, machines, equipment, appliances, devices or apparatuses and thus do not qualify as farm equipment and machinery. As such, compost, soil, and soil amendments do not qualify for the partial exemption. As to rock wool materials, you have not described this material or its purpose. Without knowing the specifics of its composition or function, we are unable to determine whether rock wool qualifies as farm equipment and machinery for purposes of the partial exemption from tax. If you wish a response with respect to this item, please write again and provide us with more detailed information as described herein.

I hope this answers your question. If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Supervising Tax Counsel

WLA:bb

cc: Ms. Charlotte Paliani (MIC: 92)
Mr. Vic Anderson (MIC: 40)
Mr. Larry Bergkamp (MIC: 44)
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Ventura District Administrator (AR)