

**STATE BOARD OF EQUALIZATION**

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March 8, 1984

Mr. S--- A. F---
E--- S--- Farm
XXXXX --- Road
---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. F---:

Your letter, received February 2, 1984, has been referred to me for reply. You ask if you should be charging sales tax on the sale of eucalyptus seedlings grown especially for fuel purposes.

Sales of eucalyptus seedlings to persons who will either resell them, as seedlings or as mature trees, or who will grow them expressly for fuel purposes are exempt from sales tax. Regarding sales for resale, Revenue and Taxation Code Section 6091 applies:

"For the purpose of the proper administration of this part and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale."

Section 6358.1(a) exempts from sales and use tax the sale of "Organic products grown expressly for fuel purposes." To support this exemption, the seller should obtain an exemption certificate pursuant to Section 6421(a) which provides:

"(a) If a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted by this chapter from the computation of the amount of the sales tax, and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of sales tax as if he were a retailer making a retail sale of the property at the time of such use, and the cost of the property to him shall be deemed the gross receipts from such retail sale. The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith."

If the seller fails to obtain an exemption certificate stating the exempt purpose for which the purchased property will be used; i.e., that the seedlings will be grown for fuel, he or she would have the burden of proof of showing that the sale was exempt (Heinz v. Board of Equalization (1962) 209 Cal.App. 2d 1). We enclose a copy of Regulation 1667 on Exemption Certificates and Regulation 1668 on Resale Certificates.

The exemptions discussed above do not apply if the seedlings or trees are purchased for any additional specific purposes; i.e., ornamental purposes, to prevent soil erosion, or seed production (Business Taxes Law Guide Annotation 510.0220). For example, the exemption would not apply if a purchaser buys seedlings, plants them in a manner so as to control soil erosion, then harvests the trees and sells them or consumes the trees as fuel.

If we may be of further assistance, please write us.

Very truly yours,

James A. Davis
Tax Counsel

JAD:jlh

Enclosure