STATE BOARD OF EQUALIZATION

April 18, 1966

C--- ---

XXX --- Building
--- and --- Streets
---, CA XXXXX

Attention: Mr. E--- J. M---
Executive Secretary

Gentlemen:

This is in reply to your letter of April 12, 1966, regarding the application of sales and use taxes to the operations of landscape contractors.

It is our opinion that a landscaping contractor who contracts to install a lawn is improving realty and in such cases would be governed by the provisions of sales and use tax ruling 11, copy enclosed. As therein indicated in the section "Materials Used by Contractors," the contractors are the consumers of the materials used by them in fulfilling construction contracts and the tax applies to the sale of such materials to the contractors. Lawn seed used in installing a lawn would fall within this classification.

With respect to shrubs and plants used in connection with landscaping contracts, it is our opinion that these are similar to "fixtures," as defined by ruling 11. Therefore, a landscape contractor would be considered as a retailer of shrubs and plants furnished in connection with such services and tax applies to the selling price thereof. In the case of lump-sum contracts, the selling price of the shrubs and plants is regarded as the cost price. If the shrubs and plants furnished in fulfilling a lump-sum contract had been grown or produced by the landscape contractor, the retail selling price thereof is regarded as the prevailing price at which similar shrubs and plants in similar quantities would be sold to other suppliers. A time and material contractor would be subject to the same tax consequences, excepting only that in the case of shrubs and plants for which he made a specific charge the measure of the tax would be that specific charge.

If a landscape contractor purchases such plants and shrubs from nurseries and pays sales tax on those purchases, then if he makes no use of them (other than retention, demonstration, or display while holding them for resale in the ordinary course of his business), he would be entitled to the deduction for "tax-paid purchases resold," under ruling 71, copy enclosed.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb
Enclosures

cc: --- – District Administrator

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-2641

January 14, 1985

Mr. R--- M---
G---
Box --
--- --- CA XXXXX

Dear Mr. M---:

We are enclosing copies of the backup letters to the annotated materials you requested. Our review of such backup letters to the annotations reveals that the March 25, 1953 opinion (annotated at 190.0480) has now been outdated as to the last sentence in paragraph three on page 1. Such sentence presently reads:

> "If the shrubs and plants furnished in fulfilling a lump sum contracts (sic) had been grown or produced by you, the retail selling price thereof is regarded as the prevailing price at which similar shrubs and plants in similar quantities would be sold to you by other suppliers."

This 1953 statement has been outdated by the present statement in Regulation 1521(b)(2)(B)2(b) that:

> "If the contractor is the manufacturer of the fixture, the cost price is deemed to be the price at which similar fixtures in similar quantities ready for installation are sold by him to other contractors."

To paraphrase this change, the letter says that the retail selling price of similar shrubs and plants in similar quantities would be the price charged to the contractor by other suppliers while the regulation now states the current rule that the retail selling price of similar shrubs and plants in similar quantities is the price charged by the contractor to other contractors.

Very truly yours,

Donald J. Hennessy
Tax Counsel