

M e m o r a n d u m**210.0593.500**

To: Lynn Garcia
Return Review, Team 5 (MIC:35)

Date: February 28, 1994

From: Rachel Aragon
Staff Counsel

Subject: X-----

This is in response to your memorandum dated December 28, 1993, in which you ask how tax applies to wine used for tasting. The taxpayer, X----- has been claiming a deduction for wine used for tasting less the cost for the bottling supplies.

Revenue and Taxation Code sections 6094 and 6244 provide that when merchandise is purchased under a resale certificate, or for the purpose of resale, and the purchaser makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so used or stored. (Reg. 1668(a) (2)) Revenue and Taxation Code section 6009 explains that use includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

When taxpayer provides wine samples to prospective customers, that exercise of right or power over the merchandise constitutes a use under Section 6009. Thus, the bottles of wine used for tasting are subject to tax. The taxpayer is not entitled to any deduction with respect to the wine used for tasting and the taxpayer must report on line 2 of its return, the purchase price of such items consumed.

RMA:jlh

cc: San Jose – District Administrator (GH)