



STATE BOARD OF EQUALIZATION

November 21, 1972

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From your letter of November 9, 1972, we understand that you are in the process of starting a mail order retail service business. One aspect of this business is gamma ray irradiation of plant seeds and plant cuttings sent in by various customers.

The following is a more detailed description of this segment of your business:

Customers will mail plant seeds, cuttings, bulbs, etc., to your company. Your company in turn will expose these items to gamma ray irradiation to induce mutations. These items will then be mailed to the customers who will plant them.

From my telephone conversation with your wife on November 14, we also understand that most of your customers will be colleges or experimental laboratories which will study the mutations after germination rather than persons who will normally sell the resultant mutations or the products therefrom.

First of all, we cannot agree that the annotation concerning short-term heat irradiation of metal samples supplied by various individuals is analogous to your operations. In the metal irradiation case, as distinguished from yours, the customers did not contract to have their property returned with any latent effects due from irradiation. In your case, however, the customers contract specifically to have their items irradiated in order that the latent effects will later appear after germination. Accordingly, it is our opinion in such a case that your irradiation does constitute a processing of property and therefore is a sale under Section 6006(b), pamphlet enclosed.

Therefore unless there is an exemption for such a process your charges will be subject to tax. The only one that appears to have any bearing on this problem is found in Section 6358. This section exempts from sales tax sales of seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be resold in the regular course of business.

Applying these rules to your business, it is our opinion that any changes you make for the irradiation of seeds and annual plants the products of which ordinarily constitute food for human consumption, for example, wheat, rice, etc., or the products of which are to be sold in the regular course of the purchaser's business, will not be subject to sales tax. However, any changes for irradiation of items not covered by the foregoing conclusions will be subject to tax.

Any customer claiming that his purchases are exempt under the foregoing ruling should issue an exemption certificate as provided in Section 6421.

Of course, if the purchaser is going to resell the irradiated item prior to making any use of it, he can properly issue you a resale certificate. See copy of Regulation 1668, copy enclosed.

Very truly yours,

Glenn L. Rigby
Tax Counsel

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Enclosures

Bc: Orange County – Dist. Admin.

Mr. Robert Nunes
Mr. don Hennessy