STATE BOARD OF EQUALIZATION

November 10, 1950

--- --- ---
--- --- ---
--- --- ---

Gentlemen:

This is in answer to your letter of October 16 with respect to deductions you may take at Line 11 of your sales and use tax return.

You are advised that a retail sale is defined by Section 6007 of the Sales and Use Tax Law to mean a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. Accordingly, the sale to you of tangible personal property which you use in producing your avocado trees, except fertilizer, is subject to the tax although the property may be resold with the tree following its use in your nursery.

From the information in your letter it is our opinion that the tax applies with respect to sales to you of stakes, ties, and fasteners, which you use to support the trees while in the nursery. Accordingly, no deduction may be taken for these items at Line 11 of your return. If you have purchased such supplies without the payment of the tax, the cost price thereof should be reported at Line 2 of your return.

Burlap material and twine used to wrap around the root area of a tree at the time of sale is nonreturnable container material. As indicated by Part (a) of the fifth paragraph of Ruling 49, the tax will not apply to nonreturnable containers or nonreturnable container material sold to you without the contents and in which you place the contents and sell the contents together with the container.

The application of the tax to sales of labels to you will depend upon the particular type of labels you use. As indicated by the last part of Ruling 49, the tax does not apply to sales of name plates or labels which are affixed to the property to be sold and which are sold with and as a part of such property. On the other hand, the tax will apply to the sale to you of such items as price tags, shipping tags, and advertising matter used in connection with the sale of the trees.

Very truly yours,

R. G. Hamlin
Associate Tax Counsel

RGH:HB

cc: --- --- ---r