

STATE BOARD OF EQUALIZATION

OFFICE CORRESPONDENCE

510.0360

Place: Sacramento
Date: April 13, 1953

To: Mr. Fred Larsen

From: E. H. Stetson

Re: M--- N---
XXX --- --- Road

Account No. -- - XXXXX

In accordance with your request I have reviewed this audit.

It appears that the only items in dispute are purchases of peat moss, sand, gravel, crushed rock, sticks, stakes, trellises, and plant ties. I gather from reading the brief submitted by taxpayer that the peat moss, sand, gravel, and crushed rock are placed in the pots or cans in which the plants are placed and are ultimately sold along with the plant in the same pot or can. I understand that no use is made of these items prior to their being placed in the pots or cans. It further appears that the sticks, stakes, trellises, and plant ties are also placed in the pots or cans or attached to the plants after they are placed in the pots or cans.

Apparently these items were set up as self-consumed on the theory that the plants were not ready for sale until some time after they had been placed in the pot or cans and that, therefore, the items in question were considered used in the process of growing the plants to salable size. There is some conflict as to whether the plants are held for sale from the moment they are set in the pots and cans.

The audit refers to three references in the Index and Digest in support of its position. One of these, R--- F. W--- and Company, -- XXXX, was a case in which the nursery raised azaleas in wooden growing beds containing peat moss. The audit took the position, which was sustained by the Board, that the peat moss was purchased for some purpose other than resale, but, as stated in Mr. T---'s memo to Mr. S--- of March 22, 1951, "The peat moss placed in pots and resold as potted plants is not included". One of the other references, H---'s N---, -- - XXXXX, merely stated that top soil is not a fertilizer and its sale at retail is, therefore, subject to tax. It also stated that hays, straws, leaf mold, and sand are regarded as soil amendments rather than fertilizers. The other reference, H---'s N---, G-XXXXX, merely stated that peat moss is not exempt as a fertilizer and since taxpayer is purchasing peat moss for the purpose of using it as a media in which to grow azaleas the tax applies to its sale. The inquiry shows that these azaleas are grown

Mr. Fred Larsen
Account No. -- - XXXXXX

-2-

April 13, 1953
510.0360

in raised bed apparently identical to the situation presented in the petition of R--- F. W--- & Company.

You will note that none of these three cases involves the placing of the peat moss or other material in the container in which the plant is ultimately sold and, as noted, the peat moss placed in the containers in the R--- F. W--- & Company case was not set up as subject to tax. It is my opinion, therefore, that, if in the M--- N--- audit, no use was made of any of the items in question prior to being placed in the cans, pots, or other containers in which the plant is ultimately sold, taxpayer should be regarded as buying these items for resale.

It seems rather odd that gravel and crushed rock would not be used except to be placed in the pots, but this is stated to be a fact in the brief submitted by the nursery.

It is suggested that the audit be carefully reviewed to determine whether any other use of the items in question is made and, if it is found that the sold use of them occurs after they are placed in the cans or pots, that they be eliminated from the measure of the tax.

EHS:ph