

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition of REDWOOD RANCH & VINEYARDS, INC. for
Redetermination of Sales Tax*

Appearances:

For Petitioner: Wallace J. S. Johnson
In pro per.

For Staff: Joseph Manarolla
Tax Counsel

MEMORANDUM OPINION

This petition is made pursuant to Section 6561 of the California Sales and Use Tax Law by Redwood Ranch & Vineyards, Inc. (hereinafter Petitioner) against a deficiency determination of sales tax in the amount of \$154.79 plus penalty for failure to file returns in the amount of \$15.50, plus statutory interest.

The issue presented by the petition is whether buds when removed from grapevines and grafted (budded) to rootstock constitute “seeds” within the meaning of Section 6358(c) of the Revenue and Taxation Code.

Petitioner is a corporation, operates a cattle ranch and maintains vineyards for the production of varietal grapes.

The Board granted Petitioner 30 days in which to file a brief and a statement from Professor Harold Olma of the University of California at Davis. Neither the brief nor the statement have been submitted within the granted time. The opinion therefore is based on the record.

During the years 1972 and 1973 Petitioner made sales of buds for the propagation of grapevines.

To obtain the buds a section of grapevine containing five or six buds (bud wood) is cut from an established grapevine. The bud wood is then placed in cold storage until needed. Petitioner’s representative stated that the buds were primarily for Petitioner’s own use to expand its own vineyard. Some of the buds, however, were sold to persons interested in propagating grapevines of the represented varieties. The sales price of the bud wood was based on the number of buds on the section of bud wood sold. It is these sales that are protested here.

Use of the buds requires that they be cut from the bud wood and notched into a rootstock. This procedure is known as “budding”. The rootstock, with the included buds, is covered with earth. The buds eventually sprout and become a new grapevine.

The staff has regarded the bud as not constituting a “seed” within the meaning of Section 6358(c) of the Revenue and Taxation Code.

Petitioner contends that buds are seeds entitled to the exemption from taxation granted by Section 6358(c).

Section 6358(c) provides that seeds and annual plants, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, are exempted from sales and use taxes.

Petitioner, however, argues that the bud, when removed from the bud wood and grafted (budded) to the rootstock for the purpose of propagating varietal grapevines, constitutes a seed by reason of its function. Under this reasoning, however, cuttings and bulbs also would qualify as seeds. We do not believe that the exemption statute can be so broadly construed. The Board consistently has ruled that cuttings and bulbs do not constitute seeds within the meaning of Section 6358(c) even though they are capable of producing a growing plant. A seed, unlike a bud, is self-sustaining and does not require support for growth from a cutting or established rootstock.

Buds by definition are distinguishable from seeds. Webster’s New Third International Dictionary (Unabridged) contains the following:

“Bud (N) A small lateral or terminal protuberance on the stem of a plant consisting of an undeveloped shoot made up of rudimentary foilage leaves or floral leaves or both overarching a growing point and often protected by specialized bud scales; an incompletely opened flower. . . .”

“Seed (N). Something that is sown; the fertilized and ripened ovule of a seed plant comprising a miniature plant usually accompanied by a supply of food enclosed in a protective seed coat often accompanied by auxiliary structures and capable under suitable conditions of independent development into a plant similar to the one that produced it.”

R. W. Adriance and F. R. Brison, *Propagation of Horticultural Plants*, 2 ed. (1955), contains the following:

“Buds. A bud is a growing point, surrounded by small partially developed leaves. It is in reality a rudimentary stem in a state of dormacy or limited growth protected by an envelope of bud scales.”

“Seeds. True seeds have three essential parts in common which become their distinguishing characteristics. (1) The embryo is the most important component of a seed. It is the living plant developed from the fertilized egg cell, and its growth has been restricted by the maturity of the seed. Its parts are radicle [rudimentary root], plumule [rudimentary shoot], and one or two catyledons [rudimentary leaves], (2) Stored food is another component of a seed. It is deposited in the seed while it is still on the mother plant, (3) the testa is the outside covering forming the protective coat of the seed.”

This authority also states at page 222 under the heading “Grape” in relevant part as follows:

“the grape can be propagated in several different ways—from seeds, from cuttings, by layering and by budding and grafting.

Because of the extreme variability of seedling plants of grape, commercial viticulturalists never grow a vineyard from seed.”

Further relevant definitions are as follows:

“budding is a type of grafting in which a plant bud is inserted under the bark of the stock.”

“Grafting is the horticultural practice of uniting parts of two plants so that they grow as one. . . . The part grafted onto the stock or rooted part may be a single bud, as in budding, or a cutting that has several buds.”

It is clearly stated that propagation by budding is not propagation from seed and implicit in the statement is the fact that buds and seeds are not synonymous. Our research has revealed no authority for the proposition that a bud is a seed whether in common usage or in the technical or botanical sense.

The Standard Encyclopedia of Horticulture touches on the common usage of the term in its definition of seed as follows:

“a seed is a ripened embryo and its integuments and storage supplies resulting from the fertilization of a flower. In general literature and common speech, a seed is that part of the plant which is the *outcome of flowering* and which is used for propagating the species. In the technical or botanical sense, however, the seed is the ripened ovule. The seed contains an embryo, has one or more leaves (cotyledons), a bud or growing point (plumule) and a short descending axis (caulicle). From the caulicle or stemlet the radicle or root develops. This embryo is a minute dormant plant. Each embryo is the result of a distinct process of fertilization in which the pollen of the same or another flower has taken part.” (Emphasis added.)

A bud is not the “outcome of flowering” and clearly does not meet the definition of a seed even under common usage.

The statute expressly exempts “seed”, not buds or a combination of buds and rootstock. It is well established that statutes granting exemption from taxation are to be strictly construed. (*Good Humor Co. v. State Board of Equalization*, 152 Cal.App.2d 873).

In our view buds do not constitute seed within the meaning of Section 6358(c) of the Revenue and Taxation Code.

For the reasons expressed in this opinion, the matter is redetermined without adjustment.

Done at Sacramento, California, this 3rd day of February, 1976.

William M. Bennett, Chairman
George R. Reilly, Member
Richard Nevins, Member
Attested by: W. W. Dunlop, Executive Secretary