



(916) 445-8485

July 24, 1980

Mr. J. D. Smart  
Vice President and Controller  
E & J Gallo Winery  
600 Yosemite Blvd.  
Modesto, CA 95354

Dear Mr. Smart:

This is in response to your July 10, 1980, letter concerning my January 28, 1980, letter to the Fresno County Assessor re grape concentrates.

Pertinent are Revenue and Taxation Code Section 992 and Property Tax Rule 136, Wine Exemption. The former provides:

"Any wine, winery product or brandy produced or manufactured in California by a licensed winegrower, wine blender, or manufacturer which now or hereafter is held in bond by a licensed winegrower, wine blender, or manufacturer shall be subject to taxation only once while so held, on the first day in March on which it is held immediately following its production or manufacture. The tax on such property shall be subject to all the provisions of this code regarding the assessment, equalization, levy and collection of county taxes, to the extent that those provisions are applicable."

Rule 136(a) provides that any winery product produced or manufactured in this state by a licensed winegrower, wine blender, or manufacturer and held in bond by a licenses on March 1, 1970, or on any given lien date thereafter is exempt from taxation provided that it has been previously taxed while so held in bond. "Winery product" means any product other than wine produced in a winery, including grape concentrates (Rule 136(d)(2)). The exemption is applicable only to winery products while held in bond (Rule 136(d)(2) and (b)). Rule 136(b) proceeds to state that to be regarded as held in bond, such products must be a type subject to an internal revenue tax not yet determined or paid but whose payment is secured by the posting of a bond.

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Upon inquiry of the U. S. Treasury Department's Alcohol, Tobacco and Firearms office in Sacramento, we were advised that a product with no alcoholic content is not subject to internal revenue tax. Thus, grape concentrates, having no alcoholic content, are not products of a type subject to an internal revenue tax not yet determined or paid but whose payment is secured by the posting of a bond. Or, in other words, Rule 136(b), by its definition of "held in bond", precludes exemption from property taxation of grape concentrates having no alcoholic content.

As I read your letter, you are contending that grape concentrates not properly accounted for for federal tax purposes may form the basis for a tax assessment on the presumption that they have been converted to wine and thus, that such concentrates may be subject to internal revenue tax. Determinative for purposes of Rule 136(b), as indicated, is whether products are of a type subject to an internal revenue tax whose payment is secured by the posting of a bond, however, not merely that products may be subject to tax because they have not been accounted for properly.

In conclusion, while the Fresno County Assessor has been made aware of your disagreement with the escape assessment by means of a copy of your July 10 letter, said letter does not suffice as an appeal of the assessment, if, indeed, it is intended as such.

Very truly yours,

James K. McManigal, Jr.  
Tax Counsel

JKM:fr

cc: Mr. William Greenwood  
Fresno County Assessor  
Attn: Mr. Joseph Fanciullo

bc: Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson  
Mr. Verne Walton  
Mr. Bud Florence  
Legal Section