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May 18, 1993

BURTON W. OLIVER
Executive Director

Mr. B--- Z---, Chairman
C--- C--- N--- A--- Board
XXXX South ---
---, CA XXXXX

Re: Taxability of Nursery Tree Sales
--- & --- Nursery
SR -- XX-XXXXXX

Dear Mr. Z---:

This office has received a letter from you dated March 17, 1992 concerning the tax applicable to assessments paid to the California Department of Food and Agriculture.

In your letter, you state that the California Legislature has recently enacted an assessment on citrus tree sales by nurseries. The California Department of Food and Agriculture collects the assessment funds and has informed you that while the assessment is determined on gross sales before sales tax, the assessment amounts that you collect are subject to sales tax. You ask for an opinion as to this question.

California Food and Agriculture Code section 6971 now provides that an annual assessment of one percent shall be levied upon any licensed nursery dealer on the gross sales of all citrus fruit trees produced and sold within California. The assessment is due and payable to the director of the California Food and Agriculture Department at the time that the nursery dealer applies for the renewal of his license issued by the Department. The measure of gross sales is determined to be the gross sales for the previous fiscal year of each licensee. The assessment received by the Department is paid into the State Treasury and credited to the Department of Food and Agriculture to support the citrus tree programs of the Department.

Sales tax is applicable to the sale of citrus trees to the retail customer based on the sales price paid by that customer (Rev. & Tax. Code § 6011). Although there is no requirement in Food and Agriculture Code section 6971 that the nursery dealer be reimbursed for the assessment by the tree purchaser, sales tax is applicable to the total charge paid by the customer when the assessment is not billed to the customer, when the assessment is included in the price for which the trees are sold or when the assessment is separately stated in the invoice provided to the customer.

Very truly yours,

Thomas Cooke
Tax Counsel

TC:cl