

510.0000 SEEDS, PLANTS AND FERTILIZERS—Regulation 1588

(a) SEEDS AND PLANTS

[510.0010](#) **Alfalfa, Flax and Cress Seeds.** Alfalfa seeds used to make sprouts, flax seeds and cress seeds all qualify as “. . . seeds . . . the products of which ordinarily constitute food for human consumption . . . ”and are exempt from sales tax, unless labeled as a food supplement or equivalent. 3/14/90.

[510.0013](#) **Amplify D.** Amplify D is a chemical substance (adenosine monophosphate) which is applied to either the soil or the seed and is intended to improve the germination, growth, or other desirable characteristics of plants (emergence and seedling vigor). Accordingly, Amplify D is an auxiliary plant substance as defined in Food Agricultural Code section 14513 and, therefore, does not qualify for tax exempt treatment under Regulation 1588. 10/11/89.

[510.0020](#) **Bulbs,** plowed under or otherwise destroyed at the termination of one growing season, are regarded as annual plants, and the sale thereof is exempt if the products are to be sold in the regular course of business. 9/19/52.

[510.0077](#) **Fig Pollen.** Capri fig pollen which is sold for use in pollination of the Calimyrna fig is exempt from tax even though the Capri fig is inedible. The pollen is regarded as an annual plant which is used in the production of Calimyrna figs for human consumption. 11/8/94.

[510.0089](#) **Seedlings.** Sales of eucalyptus seedlings to persons who will grow them expressly for fuel purposes are exempt from sales tax under section 6358.1 provided an exemption certificate under Regulation 1667 is taken by the seller in good faith and timely. The exemption would not apply if a purchaser buys seedlings, plants them in a manner so as to control soil erosion, then harvest the trees for fuel. 3/8/84.

[510.0120](#) **Nursery Stock.** Seeds, annual plants, and fertilizer to produce and grow nursery stock for resale are not taxable, nor are nonreturnable containers in which stock is placed and both sold. 6/19/50. (Am. 2002-2).

[510.0160](#) **Ornamental Plants.** The sale of ornamental plants, unless sold for resale, is subject to sales tax. 7/11/63.

[510.0175](#) **Palm Trees.** Since dates ordinarily constitute food for human consumption, on or after January 1, 1999 sales of palm trees that produce edible dates are exempt from tax even if sold for landscaping purposes under section 6358. The exemption does not apply to sales of the fruitless variety or to palm trees that produce inedible dates or dates not generally eaten. 6/11/99. (2000-1

[510.0190](#) **Seed Purchases and Growing Agreement.** Separately stated charges for growing services required to transform avocado seeds into planting seedlings are subject to the tax where the true object of the purchaser's order was to obtain the seedlings ready for planting. 3/1/78.

[510.0220](#) **Seeds and Seedlings of Timber Trees.** Sales of seeds and seedlings to a purchaser, solely for the purpose of producing timber trees to be harvested and sold are exempt as sales for resale. The sale of the seeds is also exempt under section 6358(c). If the trees are, in fact, purchased also for an additional specific purpose, i.e., seed production or prevention of soil erosion, the tax would be applicable. Mere incidental beneficial effects of the trees will not, however, result in the tax becoming applicable. 4/1/66.

[510.0260](#) **Sudan Grass Seed.** Sudan grass seed when used to produce pasture grass for grazing is exempt as a sale of seed the products of which will be used as feed for any form of animal life the products of which are to be sold in the regular course of business. 2/26/53.

[510.0300](#) **Treatment of Exempt Seed.** Charges for treating exempt seed, such as beans, are not taxable. If the chemicals used in treatment become incorporated into the seed, the chemicals may be purchased for

resale. It is immaterial whether the seed is furnished by the customer, or is sold to him by the person applying the chemicals to the seed. 1/7/52.

510.0320 **Use of Seed Products for Research Purposes.** Section 6358 of the Sales and Use Tax Law which exempts the sale of seed “the products of which ordinarily constitute food for human consumption,” exempts the sale of vegetable seed even though the products may be used for research purposes. 8/30/66.

[510.0360](#) **Use Prior to Sale.** Peat moss, sand, gravel, crushed rock, shavings, sticks, stakes, trellises, and plant ties, placed in the pots or cans with plants and ultimately sold along with the plant in the same pot or can, are exempt from tax.

However, the purchase price of any of these items which are used prior to being placed in such pots or cans, is not excludable from the measure of the tax. 4/13/53.

(b) FERTILIZERS

510.0440 **Agricultural Minerals.** Soft Phosphate with Colloidal Clay, Glauconitic Marl, Marland, Hoover’s Mix, and Hybro-Tite are agricultural minerals and exempt from tax as fertilizers. 2/8/54.

510.0470 **All-Purpose Spray Adjuvant and Spray Adjuvant Defoamer.** “All-Purpose Spray Adjuvant” and “Spray Adjuvant Defoamer” are subject to sales tax because they cannot be classified as fertilizers within either the code or regulation meaning. These products do not contain nutrients. 5/3/77.

510.0475 **Aqua-Ponic Garden System.** The Aqua-Ponic Garden System is described as self contained and that it will feed and water itself. The basic system e basic system incorporates a solution of pre-mixed nutrients and water that is fed to plants growing in a sterile growing media (not soil). The gravel medium in which vegetables grow is described as any pea size or large lava rock, center or lightweight aggregate.

For the sale of the nutrient to be exempt from sales and use tax, it must be “applied to land”, Regulation 1588 (b). The balanced Use Tax Law does not define “land”, but “land” is defined in the Civil Code as “. . . the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance . . .”. This definition is broad enough to include the gravel medium in which the vegetables grow, and into which the nutrient is inserted. The nutrient solution is “applied to land the products of which are to be used as food for human consumption,” and if it contains the chemical composition necessary to meet the statutory requirements qualifying it as a “fertilizer,” sales of the nutrient are exempt from sales and use tax. 12/13/90.

510.0480 **“Bean Straw”** being a “soil amendment,” like peat moss, having no more plant food value than peat moss, is not an exempt fertilizer when strewn on land and plowed under citrus orchards. 1/7/52.

510.0540 **B-Nine (N-Dimethylaminosuccinamic Acid).** B-Nine is used by growers to retard the growth of stems of certain flowering plants. It acts on plants by affecting their cellular structure and not by virtue of furnishing nutrients. Accordingly, B-Nine is not regarded as a fertilizer. 6/23/65.

510.0560 **Bulk Organic Mulch.** Tax does not apply to sales of bulk organic mulch composed of recycled or composted grass, leaves, and brush for use in an almond orchard if the seller supplies a nutrient analysis to the purchaser which conforms to Food and Agricultural Code section 14512 such that the product would be considered an agricultural mineral by the Department of Food and Agriculture. The seller is required to obtain a Fertilizing Materials License before marketing the product in California. Under such circumstances, the mulch would be considered to be an agricultural mineral and, therefore, fall within the definition of fertilizer under sales and use tax Regulation 1588(b)(1). 3/27/97.

510.0580 **Carbon Dioxide.** Carbon dioxide sold at retail to farmers for application to their land to assist in the neutralization of alkaline soils, qualifies as a “fertilizer.” 5/6/60.

510.0592 **Complete Green.** Complete Green is a synthetic polyelectrolyte, a special kind of polymer which is used in agriculture to improve the quality of topsoil. Synthetic polyelectrolyte is classified under section 14513(a) of the Food and Agriculture Code as auxiliary soil and plant substance. Section 14513 further provides, however, that substances which are commercial fertilizers, agriculture minerals, economic poisons, soil amendments, or manure “are excluded from the term auxiliary soil and plant substance.” Thus, a substance which is classified as an “auxiliary soil and plant substance” under section 14513 does not qualify under the Food and Agriculture Code as a “commercial fertilizer,” an “agriculture mineral,” or a “manure.”

Since synthetic polyelectrolytes are specifically excluded from the definition of fertilizers, agricultural minerals, and manure under the Food and Agriculture Code, synthetic polyelectrolytes are not considered to be fertilizers under Regulation 1588. Therefore, Complete Green, a synthetic polyelectrolyte, is not a fertilizer and tax applies to the sales or use of this product. 1/30/84.

510.0596 **Cottonseed Meal Used in Growing Mushrooms.** Since there is no commercial fertilizer manufactured for growing mushrooms, mushroom growers formulate a compost with various ingredients, including cottonseed meals which contain close to 5% nitrogen to fertilize the mushroom spawn with essential ingredients necessary to produce commercial mushrooms. The growers purchase the ingredients separately and mix them together to make the compost.

Mushrooms are products which are used as food for human consumption. The only issue is whether the cottonseed meal is within the definition of “fertilizer.” A “commercial fertilizer” is defined in section 14522 of the Food and Agricultural Code as including any substance which contains 5% or more of nitrogen. Based upon representation that the cottonseed meal contains close to 5% nitrogen and that it contains essential ingredients necessary to produce commercial mushrooms, the cottonseed meal is an agricultural mineral exempt from tax. 8/7/92.

510.0600 **Cover Crop Seed.** Sales of cover crop seed are not subject to tax where the cover crop is plowed under for use as fertilizer, provided the cover crop is planted on land which, after the cover crop is plowed under, will be used in the production of food products for human consumption or for the production of crops for sale. 3/29/50.

510.0660 **Earthworms.** Sales for use in improving soil are subject to tax. 1/25/50.

510.0700 **Fill Dirt.** Sales of fill dirt to dairies and farmers are subject to tax. Such product is not an exempt fertilizer. 10/15/53.

510.0710 **First Prize Products.** “First Prize Plant Food” and “First Prize Planter Mix” are not exempt from California sales tax as commercial fertilizers. 5/3/77.

510.0720 **Foliar Applications.** Exemption of sales of fertilizer will not be denied upon the basis that the fertilizer is applied by spreading on the foliage of the plants.

Ultimate utilization of the fertilizer by the plant irrespective of the method of application, wherein the material actually reaches the soil and is absorbed by the plant through the roots, governs our conclusion. Any other construction of the exemption statute would seem to be unreasonable. 7/17/53.

[510.0820](#) **“Greenz 26.”** “Greenz 26” is an agricultural mineral and, if applied to land, the products of which are to be used as food for human consumption, or sold in the regular course of business, is exempt from sales tax. 10/4/56.

[510.0860](#) **Gypsum, Soil Sulphur, Super Phosphate and Sulfuric Acid.** The products are classified as commercial fertilizers or agricultural minerals. The sale of the products is exempt from tax when they are sold as fertilizers for application to land the products of which are to be used as food for human consumption or sold in the regular course of business. 1/3/50. (Am. 99–2).

[510.0880](#) **Hay and Straw** applied to land is not “fertilizer” and tax applies to gross receipts. 1/30/50.

510.0887 **Hay and Straw Sold to Commercial Mushroom Producers.** Hay and straw may be purchased for resale when purchased for use as a component for compost to provide essential nutrients for mushrooms which are grown for resale. 4/1/85.

[510.0900](#) **Herbicide—Ordram 5 Granular,** a selective herbicide used by rice farmers to control watergrass, is not a plant nutrient. Accordingly, it does not qualify as a fertilizer under section 6358 of the Revenue and Taxation Code. 3/4/66.

[510.0980](#) **Larvacide (Chlorpicrin).** Retail sales of Larvacide (Chlorpicrin) are not exempt as chlorpicrin is not a fertilizer or plant nutrient. 5/26/53.

[510.1000](#) **Legume Inoculants** are not fertilizers, and sale thereof to persons who will coat seeds with inoculant and plant seeds is not exempt. 7/30/59.

510.1020 **Liquid Fertilizer.** A person who sells liquid fertilizer is subject to sales tax on his purchase of nitrogen gas which is primarily used to pressurize the liquid fertilizer and force it into the irrigation system and is only secondarily used as a fertilizing agent. 8/28/69.

510.1080 **Manure as a Fertilizer.** A product which consists of animal or poultry manure to the extent of approximately 50 percent to 60 percent is properly classified as a manure and is, therefore, considered a fertilizer. 11/4/53.

510.1100 **“Marland” and “Colloidal Phosphate”** are both considered fertilizers under Regulation 1588 and are exempt from tax. 4/30/53.

510.1105 **Mushroom Growing.** Hay and straw may be purchased for resale when purchased for use as a compost to provide essential nutrients for mushrooms which are grown for resale. Peat moss may not be purchased for resale because it does not possess nutritional qualities for mushroom production. 9/11/75.

510.1108 **Mushroom Production.** A mushroom log, which is primarily a bag of saw dust which is impregnated with mushroom spores and incubated for 3–4 months to produce a living mushroom culture, is not a “fertilizer” and tax applies to its retail sale. Mushroom spores are not seeds and tax applies to their retail sale. 9/21/94.

510.1123 **N-Serve 24, N-Serve 24E and Energizer.** “N-Serve 24” and “N-Serve 24E” are pesticides, not fertilizers. “Energizer” is an auxiliary soil chemical, not a fertilizer. 4/11/78.

510.1135 **Nitrogen Zinc Foliar Spray.** Nitrogen Zinc Foliar Spray qualifies as an exempt fertilizer when sold to commercial farmers. 7/7/76.

510.1150 **Nutrient Buffer Spray.** Nutrient Buffer Spray qualifies as an exempt fertilizer when sold to commercial farmers. 7/7/76.

510.1200 **Peat Humus** is a soil amendment and not a fertilizer. 8/1/51.

510.1220 **Peat Moss** is classified as a soil amendment and is not a fertilizer. 5/9/50.

[510.1230](#) **Pest Control Products and Growing Mediums.** Neither pest control products such as pesticides, insecticides, germicides and biologically beneficial insects and organisms nor growing mediums such as compost, soil and soil amendments used in hydroponics growing systems qualify for the farm equipment and machinery partial sales tax exemption.

In order to qualify for the partial exemption from tax provided by Revenue and Taxation Code section 6356.5, three requirements must be met: 1) the purchaser must be a qualified person; 2) the property must

qualify as farm equipment and machinery or parts thereof; and 3) that property must be primarily used in producing and harvesting agricultural products.

Regulation 1533.1(b)(1)(A) specifically excludes supply items not used in producing and harvesting agricultural products from the definition of “farm equipment and machinery.” and regards chemicals (i.e., a substance obtained by or used in a chemical process) as supply items. Chemicals therefore do not qualify as farm equipment and machinery. Since pesticides, insecticides and germicides are generally chemicals, they similarly do not qualify as farm equipment and machinery.

Ladybugs, nematodes, or lacewings are beneficial insects that perform the type of activities commonly performed by agricultural chemicals such as pesticides. These insects do not constitute a “new or used tool, machine, equipment, appliance, device or apparatus used in the conduct of agricultural operations” and do not qualify as farm equipment and machinery.

While compost, soil or soil amendments are products used in producing and harvesting agricultural products they too are not tools, machines, equipment, appliances, devices or apparatuses and thus do not qualify as farm equipment and machinery. The partial tax exemption is not applicable to sales of these items. (10/22/03). (2004–2).

510.1310 Protective Apple Bags. In early Spring, an apple farmer encloses nascent apples in special bags to protect the fruit during growth, a period lasting approximately five months. These bags are removed fifteen days prior to harvest to allow the apples to color up for picking and packing. The bags are formulated to decompose in the soil around the apple tree thereby adding humus and small amounts of nitrogen to the root zone of the tree. However, the main benefit of using these bags is protection from sunburn, wind, rain, birds, and insects. The need for pesticides is also dramatically reduced because of the use of these bags.

These biodegradable bags do not qualify for the fertilizer exemption provided in section 6358 because the original use of the bags is not a fertilizer applied to the land. Rather, the bags are used to protect the fruit from sunburn, wind, rain, birds, and insects. Therefore, tax applies to the sale of the bags to the farmer. 7/11/96.

510.1340 Root Zone Conditioners. A taxpayer sells an item which consists of a rockwool. It is applied in “slab” form to make the soil substrate uniform, to improve water distribution, and to control EC and PH more efficiently. Root zone conditioners such as the item sold by the taxpayer are neither fertilizers nor agricultural chemicals and their sales are therefore not exempt. 5/4/94.

510.1355 Rye Grain. Rye grain does not meet the definition of either a “commercial fertilizer” or an “agricultural mineral.” The fact that it may be later used by the purchaser to produce a mixture which may meet the definition of an “agricultural mineral” does not affect the application of tax to the sale of the rye grain. 4/15/81.

510.1360 Sewage Sludge. Sewage sludge, containing 5 percent or more of nitrogen, available phosphorus pentoxide and potassium oxide in combination qualifies as a fertilizer under section 1022 of the Agricultural Code and section 6358 of the Revenue and Taxation Code. 1/21/66.

510.1400 Soil Fumigants. Carbon bisulfide and soil fumigants used in killing weeds, nematodes, insects or fungus, do not come within the fertilizer exemption and are subject to tax. 9/14/55.

510.1420 Soil Fumigants. Sales of, used to fumigate the soil and dust and spray materials used for insect control are not exempt from sales tax. 10/5/54.

510.1480 Soil Aid. Straw impregnated with horse excreta is “manure” regardless of the percentage of excreta included, unless the amount was so small as to be infinitesimal. 12/19/62.

510.1520 **Sulfuric Acid Used as Weed Killer or Agricultural Mineral.** When sulfuric acid is sold for the purpose of altering the pH of soil, it is classified by the Department of Agriculture as an agricultural mineral and if applied to land, the products of which are to be used as food for human consumption or sold in the regular course of business, it qualifies as an exempt fertilizer under section 6358. If sulfuric acid is sold for use as a weed killer and is so used, it is not classified as an agricultural mineral and does not qualify as an exempt fertilizer under section 6358. 1/5/57.

510.1540 **Top Soil, Leaf Mold** and Sand are not “fertilizers.” 7/2/51.

510.1560 **Urea.** Urea is an exempt fertilizer. 3/27/63. SALES AND USE TAX ANNOTATIONS 4941 2009–1

510.1580 **Use of Fertilizer—Application to Land.** Where original use of fertilizer by buyer is for other than application to land (for example, for use in litter) tax applies irrespective of fact that litter is later used as fertilizer. 10/11/51.

510.1590 **Vegetable Garden Fertilizers.** Best Bumper Crop 6-10-10 Tomato and Vegetable Food, Scott’s Grow Fertilizer 18-24-6 Vegetables, and Ortho Tomato and Vegetable Food are specifically sold as fertilizer mixtures appropriate for application in vegetable gardening. No other use is suggested or recommended. Accordingly, retail sales of those fertilizers will be considered exempt sales of fertilizers to be applied to land the products of which are to be used as food for human consumption whether or not the purchaser has supplied the retailer with a certificate stating that those products are purchased for application to land the products of which are to be used as food for human consumption. 4/25/80.

[510.1600](#) **Vetch and Grass Seeds.** Vetch seed, when planted as a cover crop and plowed under, is a fertilizer. 2/26/53.

510.1620 **Vetch Seed.** Vetch seed used in preparing “casing dirt” is exempt. 3/23/60.

510.1650 **Worms and Worm Castings.** Worms and Worm castings sold for use in organic gardening do not qualify for exemption as fertilizer to be applied to land. 7/7/77.

510.1660 **Waste Lime** held to be an “agricultural mineral.” 1/24/51.

510.1700 “**XXX Alcufe**” is an economic poison and not an exempt fertilizer. 6/7/56.

510.1740 “**XXX Nutra-Spray 20-4**” is not an exempt fertilizer. 6/7/56.

510.1780 **Zinc Sulfate, Zinc Oxide, Manganese Sulphate, Magnesium Sulphate, Ferrous Sulfate and Copper Sulfate** sales of, exempt when sold to be supplied to land the products of which are to be used as food for human consumption. 7/8/52.