M e m o r a n d u m

510.0300

Sacramento, California
January 7, 1952

To: Mr. H. B. Hoffman (LFG)

From: E. H. Stetson (WWM)

Subject: Application of sales tax to "Arosan" and "Isotox" used in treating seed beans

FACTS

In the first situation, a farmer brints his own seed beans to permittee for treatment with one of the above chemicals. The treatment results in coating the beans with a protective film that keeps them from being eaten by worms when they are planted in the ground. The charge is based on the quantity of beans treated and on the chemical used.

In the second situation, permittee sells seed beans to farmers that have been treated with one of the chemicals, there being a proportionate increase in the sales price.

ISSUE

Is the permittee correctly handling the transaction where, in both situations, he purchases the chemicals ex-tax for resale, and, in the first situation, does not charge any tax reimbursement for the processing of beans furnished by the farmer, or, in the second situation, on the total sales price, where he sells treated beans.

OPINION

With respect to the first situation, if, as it appears, the chemicals become incorporated in the seed beans as a part thereof, we do not believe the chemicals should be regarded as consumed by the permittee. Accordingly, it would appear that they may properly be purchased by him ex-tax for resale.

Also, in the first situation, it is our opinion that the charge for treating the seeds is not subject to the tax, assuming that these are exempt seeds within the meaning of Ruling 48. This is based on the theory that a taxable processing, within the meaning of Ruling 15, does not occur where the item processed is an item exempt from the tax. Of course, if seeds processed with these chemicals were not exempt seeds Ruling 15 would be applicable and the tax would apply to the entire charge unless the farmer was not a consumer of the seeds but was reselling the seeds in the regular course of his business.

With respect to the second situation, it would again appear that permittee might purchase the chemicals ex-tax. In addition, if, as we again assume, these seed beans are seeds, pursuant to Ruling 48, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of the farmer's business, the addition to the sales price represented by the treatment charge would not be subject to the tax. This opinion is based on the theory that this charge would represent part of the sales price of an exmept seed. Of course, if any seeds so treated are not exempt vegetable seeds, the entire charge for the treated seed would be subject to the tax, unless the sale of the seed itself, as distinguised from its products, was a proper exempt sale for resale.

WWM:ja