

**STATE BOARD OF EQUALIZATION**

(916) 323-7712

August 15, 1984

Mr. M--- G---, III
M--- C--- Co.
P. O. Box XXX
---, CA XXXXX

Dear Mr. G---:

The Board's San Diego District Office has referred your letter of June 1, 1984, to the legal staff for response. We understand you are in the business of selling mesquite charcoal. Your letter states:

“Mesquite charcoal is grown in Mexico and managed by their department of forestry. It is harvested expressly to be used as charcoal. It is grown, exported, and used expressly for fuel purposes, which is as a charcoal fuel for cooking over.”

You then state that Senate Bill 1031 (Boatwright, Chapter 1059, Stats. 1983) was adopted amending Revenue and Taxation Code Section 6358.1 and ask whether it is correct that your product is no longer subject to sales tax.

Revenue and Taxation Code Section 6358.1 is the statutory exemption for organic products and waste by-products used expressly for fuel, and, as amended, states:

“There are exempted from taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of either of the following:

“(a) Organic products grown expressly for fuel purposes.

“(b) Waste byproducts from agricultural or forest products operations, municipal refuse, or manufacturing which are used in an industrial facility as a fuel source in lieu of the use of either oil, natural gas or coal.

“This section shall remain in effect until December 31, 1986, and as of December 31, 1986, is repealed unless a later enacted statute which is chaptered before December 31, 1986, deletes or extends such date.

“(c) In addition to subdivisions (a) or (b), the exemption under this section shall include the use of still gas produced in the refining process from purchased crude oil.”

Senate Bill 1031 makes two amendments to Revenue and Taxation Code section 6358.1: 1) in subdivision (b) the requirements that waste by-products be delivered in bulk is deleted, and 2) subdivision is added to include still gas in the exemption. As you can see, subdivision (a) upon which you rely is unaltered.

Although your facts state that mesquite is “grown, exported, and used expressly for fuel purposes,” it is our understanding that mesquite grows wild and is cut to be used as charcoal. In our opinion, the language “grown expressly” in Section 6358.1 requires that the organic product must be planted, grown, and harvested for fuel purposes. The mere cutting of a wild organic product to be used for fuel purposes does not suffice for the exemption provided by subdivision (a) of Section 6358.1. This interpretation is in line with H. J. Heinz v. State Board of Equalization, 209 Cal.App 2d 1, in which it was held that exemptions from the sales or use tax are to be narrowly construed against the taxpayer.

Subsection (b), as amended does not apply because, in our opinion, charcoal used in cooking is not used in an “industrial” facility.

In summary, we are of the opinion that you should continue to regard the sale of mesquite charcoal as subject to sales tax until you submit, and the Board staff approves, evidence to the effect that your mesquite charcoal was planted, grown, and harvested expressly for fuel purposes.

If we may be of further assistance, please write this office.

Very truly yours,

James A. Davis
Tax Counsel

JAD:jlh