



205.0118

Mr. Verne Walton

May 20, 1982

Glenn L. Rigby

Inventory Exemption -- Pheasants

In your memorandum of May 4, 1982, you ask whether pheasants owned, claimed or possessed by a gaming club qualify as business inventory.

It is my understanding that on the lien date the gaming club has pheasants held in cages. For a fee, the club offers individuals an opportunity to come onto the land to hunt and shoot pheasants. In order to enhance the chances for success of the hunter, the club raises the pheasants and releases them periodically. The hunter is permitted to take a certain number of birds. If the hunter is successful, he reaches his quota. In any case, the full fee is paid whether the limit is reached or not.

It seems clear from Section 129 of the Revenue and Taxation Code and Rule 133 the "primary purpose" test is used to determine whether a particular item is to be considered held for resale in the regular course of one's business, and, therefore, qualify for the inventory exemption.

In the case of gaming clubs, the primary business is to provide a place to hunt. To attract hunters, the club raises pheasants which are released into the fields for the hunters to shoot. The primary purpose then is not to raise birds for resale or for sale. To further support this concept, it is apparent that every hunter does not get a bird(s) or that the value of the bird(s) that are taken equal the fee. In fact, the fee will always exceed the value of the birds because the fee is for the right to hunt, not to pay for the pheasants.

An analogy is the sales tax case of People v. Puritan Ice Company, 24 Cal. 2d 645. In Puritan, ice was sold to vegetable packers and shippers for use in preserving perishable products. The court held that sales to packers were retail sales and taxable despite the fact the packers and shippers separately charged their

customers for the ice. The court concluded that "the essence of the matter is that the purchasers of the ice are acquiring it for purposes other than resale. They are not engaged in the ice selling business; they are selling vegetables, and the use of the ice for the purported sale thereof to purchasers of the vegetables is merely incidental to the activity."

The foregoing analysis, even though it dealt with sales taxes, is in my opinion, equally applicable to property taxes since the Sales Tax Law also uses the primary purpose test in determining whether an item is or is not held for resale in the ordinary course of business.

Applying the foregoing to the present case, it is clear that the primary business of the gaming club is to provide an area for one to hunt with relatively good opportunity of success. To accomplish this, the club raises and releases birds on their premises. Thus, the raising, releasing and taking of the birds is merely incidental to the activity.

Although this question presents an issue of first impression, a number of counties have gaming clubs. It would be advisable to find out how the counties are handling the situation.

For your general information, I am attaching a copy of Sales Tax Regulation 1670. Of particular interest is paragraph (e).

GLR:jlh

Attachment

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson