



January 2004

LEGISLATIVE SNAPSHOT

California Association of Nurseries and Garden Centers

Elaine Thompson, President

Robert Falconer, Executive Vice President

3947 Lennane Drive, Suite 150, Sacramento, California 95834-1973

Phone: (800) 748-6214 • (916) 928-3900 • Email: association@cangc.org

UPDATE! *Ralstonia* Suspected in Nursery Shipments

USDA has confirmed that *Ralstonia* was found in Goldsmith Seed's Guatemala facility. As a result, geranium plants of three varieties from that facility have been ordered destroyed. The varieties are Americana Bright Red, Americana Coral, and Americana Cherry Rose II. According to CDFA, shipments from the Guatemala facility went to over 400 nurseries in 41 states and totaled 1.6 million plants. In addition, other plants suspected of being in conditions that could be infected by the suspect plants may be destroyed as well. CDFA reports that 58,000 plants were sent to six facilities in California, but the disease has not actually been found in any of these nurseries. Destruction of those plants is currently taking place. To learn more on the disease go to <http://www.aphis.usda.gov/ppq/ep/ralstonia>.

Board of Equalization Audits Are Taxing Growers

On January 12, a contingent of nursery industry representatives met with Board of Equalization Member Claude Parrish along with two of his key staff members at his office in Long Beach to discuss recent and ongoing audits of nurseries by the Board of Equalization (BOE) and the new aggressive position of the auditors.

For years, BOE audits of nurseries have found that nurseries owed back taxes on the "use" of containers that have been planted and then emptied when the plant was "shifted up" to a larger size. The tax also came with a penalty and interest payment. The rationale by the auditors has been that the container was purchased wholesale without paying tax but was "used" in production and therefore should pay a use tax in lieu of sales tax. No consideration has been given to the fact that many of those containers are then replanted and eventually sold retail, at which time sales tax is paid making this a case of double taxation on those containers.

Within the last year, however the auditors have become more aggressive. They are now determining that the soil that was used in the smaller container as well as the stakes and ties is taxable. In addition, they refuse to apply the agricultural rate to the soil that increases the tax by 5 percent. This could have huge ramifications to the nursery industry. If these current audit findings go unchallenged or our efforts at repealing them are unsuccessful, it will be open season on the whole nursery industry, especially with the state in its current fiscal condition.

Representing the industry at the meeting were CANGC Chairman of the Board Don Dillon, Jr., *Four Winds Growers*; CANGC Executive Grower Member Director Dave Fujino, *Hines Nurseries*; Gary Hayakawa, *Three Star Nursery*; Mike Babineau, *Village Nurseries*; CANGC Executive Vice President Bob Falconer; and Louie Brown, Esq., *Kahn, Soares and Conway*.

During the meeting, there was much discussion of the operations of nurseries. A cursory analysis of the tax code and previous annotations and decisions of the BOE indicated that the auditors are misinterpreting the law as it applies to nurseries. Several options are available to deal with this injustice from a legal opinion by the BOE General Council to a full-blown BOE board action.

The process for addressing this problem will not be completed overnight. We are currently waiting to hear back from Mr. Parrish's office to determine what our next move will be. We predict that this process will take several months to be resolved.

Once Again, Labor Demands the Ban of Hand Weeding — Fight Ahead: Falconer Takes On Labor Attorney

During their effort to pass legislation last year to ban hand weeding, labor representatives had put their effort to regulate hand weeding at Cal-OSHA on the back burner. Following their stunning defeat in the last days of the legislative session their focus now shifts back to their petition before the Cal-OSHA Standards Board.

Meetings of the committee established by Cal-OSHA to attempt to come to a consensus resumed last week but should come to a conclusion in the near future. Regardless of the result of the committee, the Standards Board will determine if they will take action on the labor group's petition and then what that action will be.

The division between labor representatives and grower representatives in large part lies in the definition of "significant damage" and "significantly greater damage." The labor representatives want to ban the utilization of hand weeding with the provision that an exception could be granted by proving that a grower would suffer significant damage or significantly greater damage if a long-handled tool were used. Grower representatives point out that the definition of "damage" could be the difference of profit and loss. Grower groups also question whether a judge or Cal-OSHA regulator that had never set foot in a field or nursery before would be qualified to make the determination. In one exchange, CANGC's Bob Falconer took issue with one of the attorneys representing labor when she said that knocking off a couple of leaves would not be *significant damage*. Falconer pointed out that in certain ornamental crops where aesthetics are important to the salability of the crop, a couple of leaves could be very *significant*. Western Grower's Mike Webb stated that California produces over 300 different crops with various marketing and damage free requirements.

Grower representatives are willing to address the issue asserted by labor that some growers or labor contractors are utilizing hand weeding in a manner to punish workers when a long-handled tool could be used. The grower-developed language is very straightforward and easy to understand, but so far, the labor community has not accepted this offering.

The committee is likely to meet one more time, but further action will be in the hands of the Cal-OSHA Standards Board.