



**STATE BOARD OF EQUALIZATION  
LEGAL DIVISION (MIC:82)**

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December 16, 1993

BURTON W. OLIVER  
*Executive Director*

Mr. [W]  
National Marketing Director  
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XXX --- ---  
--- ---, California XXXXX

Re: [No Permit Number]  
Juice Plus+

Dear Mr. [W]:

I am responding to your letter to the Legal Division dated October 28, 1993. You ask if sales or use tax applies to your company's sales of Juice Plus+. You attached to your letter a bottle label which describes the product, in part, as follows:

“Juice PLUS+ provides natural fruit powders, fruit fibers, and food enzymes, along with food actives and acidophilus.... [¶] ... Each preservative free natural gelatin capsule contains a proprietary blend of ... fruit juice powder extracts, food enzymes, fibers and food actives....”

You further indicate that it is “being sold as real food, not a food supplement, vitamin or diet product.”

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless

otherwise stated, all statutory references are to the Revenue and Taxation Code.) “[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ...” (§ 6091.) “Exemptions from taxation must be found in the statute.” (Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 P.O.2d 201.]) The taxpayer has the burden of showing that he clearly comes within the exemption. (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Food Products Exemption.

Section 6359, as interpreted and implemented by Regulation 1602, provides an exemption from sales and use taxes for sales of food products for human consumption under certain circumstances. Regulation 1602(a)(2) contains a list of fruit products which are considered “food products.” (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) Sub-division (a)(5), however, excludes certain items from the definition of “food products” as follows:

“(5) ‘Food products’ do not include any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form (A) which is described on its package or label as a food supplement, food adjunct, dietary supplement, or dietary adjunct, and to any such product (B) which is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally one or more of the following areas of human nutrition:

1. Vitamins
2. Proteins
3. Minerals
4. Caloric intake”

In interpreting and implementing the broad provisions of Section 6359(c), Regulation 1602(a)(5) thus sets up a two-step analysis. The threshold question is whether or not the food product under discussion is in one of the enumerated forms- liquid, powdered, granular, tablet, capsule, lozenge, or pill. If so, then its sales are taxable if one of the two following conditions also occurs: (A) its label or package describes it as a food supplement, food adjunct, dietary supplement, or dietary adjunct; or (B) it is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally the intake of vitamins, protein, minerals, or calories.

C. Tax Consequences.

Since Juice PLUS+ is in capsule form, could Regulation 1602(a)(5) apply to exclude this product from the category of “food products?” As you note, the label does not state that this

product is either a food or dietary supplement or adjunct. It also does not indicate that the purpose of the product is to increase, decrease, or maintain the intake of vitamins, minerals, proteins, or calories. Nor does the label make medicinal claims for Juice PLUS+. Therefore, we conclude that it is a food product the sales of which are exempt from tax under Regulation 1602(a)(1).

For your information, I have included a copy of Regulation 1602. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid  
Tax Counsel

JLW:es

Enclosure: Reg. 1602

A "medicinal claim" on the product label is no longer used as a basis for differentiating a food product from a medicine. Please see Annotation 245.0724 (11/17/08). RDT. 7/2/09.