



STATE BOARD OF EQUALIZATION

916-445-2488

December 7, 1977

[X]

Dear Mr. [X]:

This is in reply to your letter of September 22, 1977 to Mr. W. D. Dunn, which has been referred to the undersigned for reply.

You have requested our opinion on whether Pro-Life Protein Formula 96 is an exempt "food product" under Regulation 1602.

The label describes this product as "Pro-Life Protein Formula 96 with lecithin, papain, methionine and double absorption B-12; a whole and complete vegetable protein derived entirely from soybean." The label further states that "Pro-Life Protein is a scientifically balanced combination of...nutrients which has a higher PER...than ordinary soy protein." The suggested use of this product is to "add two heaping tablespoons of the protein to a glass (8 oz.) of milk, juice, or other beverage. Shake in a closed container or mix in a blender." It can also be "mix(ed) into staple foods when cooking such as vegetables, potatoes, meatloaf, hamburger patties, etc., mixed readily with flour for use in baking, pancakes, omelettes, and mixed into sandwich spreads."

Sales and Use Tax Regulation 1602(a)(5) provides in part that:

"(5) 'Food Products' do not include any product for human consumption in liquid powdered, granular, tablet, capsule, lozenge, or pill form...(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

Regulation 1602(a)(5) also provides that:

“In determining whether a product falls within category (B), it is important whether the manufacturer has specially mixed or compounded ingredients for the purpose of providing a high nutritional source. For example, protein supplements and vitamin pills are taxable as food supplements.”

We would consider “Pro-Life Protein” to be a protein supplement as they are described in Sales and Use Tax Regulation 1602(a)(5). As such, it would not be considered an exempt “food product” and tax would apply to the sale of this item.

If you have further questions concerning this matter, please write this office.

Very truly yours,

Mary C. Armstrong
Legal Counsel

MCA:jw