

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5493

September 23, 1984

Mr. [S]
XXXX --- ---
--- ---, CA XXXXX

Dear Mr. [S]:

We have been requested by Mr. Clinton Ostrom of our Sacramento District Office to review the labels from certain products distributed by Natures' Treasures International, and to render an opinion regarding the application of tax to the sale of these items. Mr. Ostrom has requested that we write to you concerning our opinion in this matter.

The various products which we considered and our conclusions concerning the application of tax are as follows:

1. Whole Grain Bee Pollen – The label directs the user to chew or add the product to fruit or cereal.
2. Kid-Bees Bee Pollen – The product label states that each tablet contains 250 mg of bee pollen.
3. Bee Pollen Tablets – The label states that each tablet contains 500 mg of bee pollen and freeze dried orange. The user is directed to eat as many tablets as desired.
4. Bee Propolis – This product comes in capsule form. The label states that propolis is a natural resinous substance gathered by the bees from trees and used to seal cracks and holes in their hives.
5. Royal Energizer – Royal Jelly for the Lady –The label states that this item is sold in capsule form and that each capsule contains “pure Royal Jelly with its own natural vitamins, minerals and proteins.” Furthermore, the label states that the product is “an enriching food supplement,” and that the product is “an energy-building food supplement for the women.”

6. Royal Energizer – For Men – The label from this product indicates that each capsule contains 75 mg powered ginseng root, 25 mg Royal Jelly, and 50 I.U. Vitamin E. The label further states that the product “is a combination of nutrients especially prepared as an energy-building food supplement for the men.”

7. Weight-Bee-Ter All Natural Diet System – With activated bee pollen. The label states that this product” is an exclusive formula consisting of activated bee pollen and freeze dried orange juice containing naturally occurring vitamins, minerals, amino acids, enzymes, nucleic acids, flavonoids and lecithin.” Additionally, the label states that the product “was designed to be an effective and easy weight reduction program that can be used with each menu (enclosed),” and that the product can also “used as a nutritional energizer separate from any diet plan.” The recommended dosage of three servings provides the user with 330 calories and 33 grams of protein per day. To make each serving, the user is directed to mix one level scoop of the powder with 8 oz. of cold water and stir well.

California Sales and Use Tax Law imposes a tax on the sale or use of tangible personal property in this state, unless such sale or use is otherwise exempt from taxation. As provided under Revenue and Taxation Code Section 6359 and Sales and Use Tax Regulation 1602 (copy enclosed), tax does not apply to the sale and use of “food products” for human consumption. Regulation 1602 (a)(5), which interprets and applies section 6359, provides that tax does not apply to the sale of unusual foods such as brewer’s yeast, wheat germ and seaweed, except when their label states they are a food supplement or the equivalent.

With regard to items 1 through 4 listed above, it is our opinion that these products fall within the category of unusual foods. Since these products are not described on their labels as food supplements or the equivalent, it is our opinion that these items qualify as exempt food products under Regulation 1602. Therefore, tax does not apply to the sale, use, or consumption of items 1 through 4 inclusive.

With regard to items 5 through 7 listed above, the exemption from tax as “food product” does not apply to the sale of preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts. (Section 6559 Regulation 1602(a)(5).

In our view, these items do not qualify as tax exempt “food products.” Items 5 and 6 are considered to be dietary supplements because they are sold in capsule form and are described on their labels to be a food supplement. Item 7 is a dietary supplement for the reason that it is sold in powdered form and is designed to decrease the users caloric intake as part of a weight loss program. (See Regulation 1602(a)(5)(A) & (B).) Consequently, the sale of the products described above as items 5 through 7 is subject to tax.

Mr. [S]

3

September 23, 1984
245.1600

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

Very truly yours,

Charles J. Graziano
Tax Counsel

CJ:ba

Enc: Regulation 1602

cc: Mr. Clinton Ostrom
Sacramento District Office