



STATE BOARD OF EQUALIZATION

916-324-5589

November 27, 1989

X-----

Re: X-----

Dear X-----,

Your letter of November 6, 1989 to Mr. Don Bennett of our Culver City District Office has been referred to the legal staff for reply. You have requested our opinion as to the following:

- “1. 'whether amino acids sold separately, or combined in a mixed formula with vitamins and minerals, are included under the category of vitamins which are exempt for sales tax purposes when Bold to physicians in the State of California',
- “2. 'whether the products as determined above, which are sold directly to physicians, qualify for this exemption when the company, as a matter of policy, sells only dietary supplements and not products for treatment as defined under -Prescription Medicines", regulation 159l(b)(1); and lastly,
- “3. "'Whether a physician, if exempt from the state sales tax requirement under this provision, must apply for and acquire a state identification number and thereafter, submit such to our company to qualify for the Section 425.0940 Sales Tax exemption' (or be free from our duty to collect such tax)?"

Revenue and Taxation Code Section 6369 provides that “medicines” which are furnished by a licensed physician and surgeon, dentist, or podiatrist to his or her own patient for treatment of the patient are exempt from tax. The amino acids sold separately or combined in a mixed formula with vitamins and minerals sold by your company are included in the definition of the term “medicines under Section 6369. As such, tax does not apply to your sales of amino acids or amino acids combined in a mixed formula with vitamins and minerals when they are sold to a physician who furnishes these products to his or her patients. The fact that you did not make any claims regarding the effectiveness of these products in the treatment of human beings does not affect the question of whether the sale in the manner described is exempt from tax.

A physician purchasing these products from your company would not be required to register as a seller and obtain a seller's permit. The proper procedure to follow would be for the physician to complete an exemption certificate as provided in Sales and Use Tax Regulation 1667 (copy enclosed) and remit it with his order. As noted in Regulation 1667(c)(1), the certificate must be in writing and include the date; the signature of the purchaser, the purchaser's agent, or the purchaser's employee; the name and address of the purchaser; a notation to the effect the purchaser is not required to hold a seller's permit (because he is a physician and does not make sales of tangible personal property); a description of the property purchased; and a statement regarding the manner in which, or the purpose for which, the property will be used so as to make sales tax inapplicable to the sale.

We trust that the above answers your questions and concerns concerning this matter. If you have further questions, please write this office again.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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Enclosure