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450 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)  
Telephone: (916) 327-2291  
FAX: (916) 323-3387

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August 10, 1995

Mr. [G]  
[F]  
XXXX --- ---,  
--- ---, CA XXXXX

Re: Sales of "Brew Your Own Beer" Packages  
S- -- XX-XXXXXX

Dear Mr. [G]:

This is in response to your letter dated June 19, 1995, in which you inquire about the tax consequences of sales of your "home brew" product.

Your product, marketed as "Brew your own Beer, Pale Ale" contains the following ingredients: malt extract, dry malt, Irish moss, gelatin, yeast, hops and sugar. You ask whether the sales of your product are nontaxable.

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, use tax applies to the use of property purchased from a retailer for use in California, unless the use is specifically exempt from tax. (Rev. & Tax. Code §§ 6201, 6401.)

Section 6359 provides an exemption from sales and use taxes for sales of food products for human consumption under certain circumstances. Subdivision (b) contains a list of products which, either singly or in combination, are considered "food products." Subdivision (a)(1) of Regulation 1602, which explains section 6359, specifically lists cereal grains, malts and malt extracts, gelatin, and sugar products as food products. Accordingly, the malt extract, dry malt, gelatin and hops, a cereal grain, qualify as food products for human consumption, sales of which are generally exempt from tax.

The two remaining ingredients in question are the yeast and the Irish moss. Business Taxes Law Guide Annotation 245.1360 (7/24/52) explains that so long as yeast is not sold as a dietary supplement, it will be regarded as a food product for human consumption, sales of which are exempt. Since the yeast included in your product is not sold as a dietary supplement, it, too, will be considered a food product for human consumption.

Irish moss, also known as carrageen, is defined in Webster's New World Dictionary (3<sup>rd</sup> college ed. 1991) at page 214, as "a purplish edible red algae" which is "used in jellies, lotions, medicine, etc." If the Irish moss is not sold for medicinal or another non edible purpose, its sales will qualify as a sale of a food product for human consumption provided it is not sold as a dietary supplement.

Although the finished product, home brewed beer, that results from the combination of these food products for human consumption, is not considered a food product for sales tax purposes (Reg. 1602(a)(2)), this does not alter the fact that these ingredients, in their packaged form, constitute food products sold for human consumption. (Reg. 1602(c); BTLG Annot. 245.0698 (5/8/91).) However, if the sales of these home brew packages include non-food items, such as bottles or bottling caps, and more than 10% of the value of the package, exclusive of the container, represents non-food products, then a segregation must be made and sales tax will be measured by the value of the non-food items. (Reg. 1602(b).)

I have included a copy of Regulation 1602 for your convenience. If you have any further questions, please feel free to write again.

Sincerely,

Patricia Hart Jorgensen  
Senior Staff Counsel

PHJ:cl

Enclosure

cc: --- District Administrator