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October 28, 2003

Mr. [T]
Law Offices of [T]
XXXXX --- ---, Suite XXX
--- ---, California XXXXX-XXXX

Re: [No Seller's Permit]
Vitamin C as Food Additive

Dear Mr. [T]:

I am answering your letter that you sent to me by facsimile transmission on September 15, 2003. You were following up on your letter to Tax Counsel IV John A. Abbott dated August 7, 2003, following up on Mr. Abbott's letter to you dated June 19, 2003 on this subject. Mr. Abbott explained to you the legal principles underlying this area and so, for the sake of brevity, we will not repeat them here.

As Mr. Abbott explained in his letter, under Annotation 245.0285 (3/5/87) carbonated fruit juices are still considered "food products" if they contain 100% natural fruit juice. "If the carbonated product includes a preservative, such as sodium benzoate, or any other additive, it will not be considered a natural fruit juice and tax will apply to its sale." You ask if naturally occurring substances such as citric acid and/or ascorbic acid (Vitamin C) are the kinds of "other additive" that place a carbonated 100% fruit juice drink in the category of non-food products the sales of which are subject to tax.

We have previously concluded that a substance that naturally occurs in fruit juices is not the kind of additive that would cause a carbonated 100% fruit juice to be excluded from food products under Regulation 1602(a)(2). This is not to say that all natural substances that might be added to fruit juice will not cause a carbonated 100% fruit juice to be deemed a non-food product, but only substances that naturally occur in fruit juice. Therefore, even if a 100% carbonated fruit juice has added ascorbic acid, it will still be considered a food product within the meaning of Regulation 1602(a)(2) if it otherwise qualifies as such. Thus, the juice's sales would not be subject to tax.

Mr. [T]

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245.0287

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
Senior Tax Counsel