

245.1063

**M e m o r a n d u m**

To: Ms. Lori Senitte  
Return Review

Date: January 31, 1992

From: John L. Waid  
Tax Counsel

Subject: [N]  
S- -- XX-XXXXXX

I am writing this to respond to your memorandum of December 12, 1991, to the Legal Department. You requested advice regarding whether or not the products the taxpayer sells qualify for the food products exemption set forth in Regulation 1602.

You attached to your memorandum a letter which you wrote to the [N] on April 12, 1991, requesting information describing the types and quantities of products which they sell. You also attached the copies of the packaging which the [N] sent in response.

**OPINION****A. Food Products Exemption**

In interpreting and implementing the broad provisions of Revenue and Taxation Code Section 6359(c), Sales and Use Tax Regulation 1602(a)(5) sets up a two-step analysis. The threshold question is whether or not the food product under discussion is in one of the enumerated forms – liquid, powdered, granular, tablet, capsule, lozenge, or pill. If so, then its sales are taxable if one of the two following conditions also occurs: (A) its label or package describes it as a food supplement, food adjunct, dietary supplement, or dietary adjunct; or (b) it is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally the intake of vitamins, protein, minerals, or calories.

A. Soy Drinks. The three soy-based drinks for which the taxpayers sent labels are Vitasoy Vanilla Delete Natural Soy Drink, SoyMoo Non-Dairy Soy Drink, and EdenSoy Natural Soy Beverage. We have previously concluded that soy-based drinks which are an independent food item and may be used as part of a regular diet or as a substitute for dairy milk for health reasons qualify as exempt food products. (See, Annot. 245.1060.)

These products all appear to be ready-to-use drinks, the labels of which merely list the ingredients. They do not indicate that these products are to be used to supplement the purchaser's diet nor do they make medicinal claims. Therefore, the products qualify as food products the sales of which are exempt from tax.

B. Herbal Tea. The label which the [N] sent for this product denominate it as Traditional Medicinals' Mother's Milk and indicates that it is a caffeine-free herbal tea for nursing mothers. We have previously concluded that herb teas qualify as food products provided that no claims of medicinal qualities are made and the labels or packaging do not specifically indicate that they are sold as a dietary supplement or adjunct. (Annot. 245.1091.) While the packaging for this product refers to herbs being used as medicines in a general way, it makes no specific medicinal claims, such as having laxative properties. Therefore, it qualifies as a food product the sales of which are exempt from tax.

JLW:es