



STATE BOARD OF EQUALIZATION

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November 18, 1996

Ms. [B]
Sales Tax Director
[N]
XXXX --- --- ---
---, -- XXXXX-XXXX

Re: *Natural Dietary Supplements*
[N]
S- -- XX-XXXXXX

Dear Ms. [B]

This is in response to your letter dated July 31, 1996 in which you inquire about the application of sales tax on your new product "Juice Plus+ Thins" which you describe as a "natural dietary food supplement." I apologize for our delay in responding to your request, part of the delay is due to the fact that your request was not received by the Legal Division until the end of September.

You have asked us to review the information relative to your new product "Juice Plus+ Thins," to determine whether tax applies to retail sales of this product. This product is sold in tablet form and is available in two flavors, apple cinnamon and chocolate nougat. The product information you provided recommends for use "[a]s a dietary supplement chew two tablets one half hour before meal(s) and consume at least an eight ounce glass of water." The ingredients of the tablets are listed and it is explained that:

"Four tablets provide:

Three (3) grams of soluble and insoluble dietary fiber from (4) grams of fiber complex, Malabar Tamarind Fruit - 0.625 grams, Lecithin - 0.3 grams, Hawthorne Berry Powder -20mg., Elemental Chromium 0.15 mg."

You have not provided any information regarding the vitamins, minerals, calories and proteins contained in the tablets.

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempted 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.) Generally sales of food products for human consumption are exempt from sales tax pursuant to Revenue and Taxation Code section 6359. However, this section specifically provides that certain items are specifically excluded from the definition of food products for human consumption. These exclusions are explained in subdivision (a) of Regulation 1602 as follows:

“(5) ‘Food products’ do not include any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form (A) which is described on its package or label as a food supplement, food adjunct, dietary supplement, or dietary adjunct, and to any such product (B) which is prescribed or described to remedy specific dietary deficiencies or to increase or decrease generally one or more of the following areas of human nutrition:

1. Vitamins
2. Proteins
3. Minerals
4. Caloric intake...”

The last paragraph of Regulation 1602(a)(5) then provides the following limitation to the above quoted exclusion from the definition of “food products”:

“Tax, however, does not apply to any such products which either are exempted by Revenue and Taxation Code Section 6369, respecting prescription medicines, or are complete dietary foods providing the user in the recommended daily dosage with substantial amounts of vitamins, proteins, minerals and foods providing adequate caloric intake. An example of the latter is a food daily requirement providing the user with the following:

1. 70 grams of high quality protein
2. 900 calories
3. Minimum daily requirements as established by the regulations of the Federal Food and Drug Administration of the following vitamins: A, B1, C, D, Riboflavin, and Niacin or Niacinamide; and the following minerals: Calcium, Phosphorus, Iron and Iodine.”

In other words, an item will **not** qualify as a food product, **unless** it is considered a complete dietary food, and its sale will be taxable if: 1) it is liquid, powdered, granular, tablet, capsule, lozenge, or pill; and 2) (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.

Since your product, Juice Plus+ Thins, is sold in tablet form, and is described as a food supplement, it does not meet the definition of a "food product" found in the first paragraph of Regulation 1602(a)(5). You have not provided any information to indicate whether these tablets contain the requisite caloric, protein, and vitamin values to qualify as a "complete dietary food" per the last paragraph of Regulation 1602(a)(5). In the absence of this information, we assume that this product does not meet these thresholds. Accordingly, pursuant to the provisions of Regulation 1602(a)(5), tax applies to sales of this product.

If you have any further questions please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Tax Counsel

PHJ:cl

cc: --- District Administrator
Ms. Michelle L. Sommer, Return Analysis Section (MIC:35)