Dear Mr. [S]:

We have been requested by Mr. Clinton Ostrom of our Sacramento District office to review the labels from certain products distributed by [N] and to render an opinion regarding the application of tax to the sale of these items. Mr. Ostrom has requested that we write to you concerning our opinion in this matter.

The various products which we considered and our conclusions concerning the application of tax are as follows.

1. Whole Grain Bee Pollen - the label directs the user to chew or add the product to fruit or cereal.

2. Kid-Bees Bee Pollen - The product label states that each tablet contains 250 mg of bee pollen.

3. Bee Pollen Tablets – The label states that each tablet contains 500 mg. of bee pollen and freeze dried orange. The user is directed to eat as many tablets as desired.

4. Bee Propolis – This product comes in capsule form. The label states that propolis is a natural resinous substance gathered by the bees from trees and used to seal cracks and holes in their hives.

5. Royal Energizer – Royal Jelly for the Lady – The label states that this item is sold in capsule form and that each capsule contains “pure Royal Jelly with its
own natural vitamins, minerals and proteins.” Furthermore, the label states that
the product is “an enriching food supplement,” and that the product is “an energy-
building food supplement for the women.”

6. Royal Energizer – For Men – The label from this product indicates that
each capsule contains 75 mg powdered ginseng root, 25 mg. Royal Jelly, and 50
I.U. Vitamin E. The label further states that the product “is a combination of
nutrients especially prepared as an energy-building food supplement for the men.”

7. Weight-Bee-Ter – All Natural Diet System – with activated bee pollen.
The label states that this product “is an exclusive formula consisting of activated
bee pollen and freeze-dried orange juice containing naturally occurring vitamins,
minerals, amino acids, enzymes, nucleic acids, flavonoids and lecithin.”
Additionally, the label states that the product “was designed to be an effective and
easy weight reduction program that can be used with each menu (enclosed),” and
that the product can also “be used as a nutritional energizer separate from any diet
plan.” The recommended dosage of three servings provides the user with 330
calories and 33 grams of protein per day. To make each serving, the user is
directed to mix one level scoop of the powder with 8 oz. of cold water and stir
well.

California Sales and Use Tax Law imposes a tax on the sale or use of tangible personal
property in this state, unless such sale or use is otherwise exempt from taxation. As provided
under Revenue and Taxation Code Section 6359 and Sales and Use Tax Regulation 1602 (copy
enclosed), tax does not apply to the sale or use of food products for human consumption.
Regulation 1602(a)(5), which interprets and applies Section 6359, provides that tax does not
apply to the sale of unusual foods such as brewer’s yeast, wheat germ and seaweed, except when
their label states they are a food supplement or the equivalent.

With regard to items 1 through 4 listed above, it is our opinion that these products fall
within the category of unusual foods. Since these products are not described on their labels as
food supplements or the equivalent, it is our opinion that these items qualify as exempt food
products under Regulation 1602. Therefore, tax does not apply to the sale, use, or consumption
of items 1 through 4 inclusive.

With regard to items 5 through 7 listed above, the exemption from tax as a “food
product” does not apply to the sale of preparations in liquid, powdered, granular, tablet, capsule,
lozenge, or pill form sold as dietary supplements or adjuncts. (Section 6359,
Regulation 1602(a)(5).)

In our view, these items do not qualify as tax exempt “food products.” Items 5 and 6 are
considered to be dietary supplements because they are sold in capsule form and are described on
their labels to be a food supplement. Item 7 is a dietary supplement for the reason that it is sold
in powdered form and is designed to decrease the user’s caloric intake as part of a weight loss
program. (See Regulation 1602(a)(5)(A) & (B).) Consequently, the sale of the products
described above as items 5 through 7 is subject to tax.

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba
Enc. - Reg. 1602

cc: Mr. Clinton Ostrom
Sacramento District Office