

M e m o r a n d u m**245.1700**

To: Out-of-State - Compliance

Date: July 22, 1977

From: Headquarters - Legal (MCA)

Subject: Taxability of Samana #9
Taxability of Slender Now

This is in reply to your memorandum of July 13, 1977 concerning the classification of the following products under the Sales and Use Tax Law:

1. Samana #9
2. Slender Now

According to the manufacturer's promotional materials, "Samana #9 is a total food concept which incorporates one-third of the National Research Councils recommended daily allowances for all the essential nutrients in a 20-gram serving or meal. ...If taken as directed this product supplies all the U. S. Recommended Daily Requirements of vitamins, minerals and protein."

Slender Now is actually a program consisting of four different products. These include:

1. Slender Now Formula 1: An exclusive formula, protein drink.
2. Slender Now Formula 2: An exclusive vitamin and mineral formula.
3. Slender Now Formula 3: A special vitamin B6 dietary supplement in a base of food supplements.
4. Slender Now Formula 4: A blend of oils, high in essential polyunsaturated fatty acids.

The "Slender Now" program, according to its informational pamphlet, is designed to "regulate carbohydrate intake, arrest hunger pangs, and...provide various essential daily nutrients." Formula 1 is "designed to be used as an aid in Dietary Weight Control which includes caloric restriction." Formula 2 and 3 appear to be vitamin supplements. Formula 4 is designed to be added to Formula 1 and also as a salad preparation.

Under Regulation 1602(5) "Tax...does not apply to any such products which either are exempt by 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." Under this provision, Samana #9 would qualify as a food product and thus be exempt from tax since it is designed to be a complete food product.

Regulation 1602(5) also provides that:

“‘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 designed 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”

Under this definition Slender Now would not be considered a food product. Formula 1 is designed specifically to decrease caloric intake; Formulas 2 and 3 are essentially vitamin and mineral supplements; and Formula 4 is a dietary adjunct since it is designed to be added to Formula 1 once a day.

MCA:jw