

**STATE BOARD OF EQUALIZATION**

(916) 445-2641

July 31, 1986

Your letter of May 22, 1986 has been referred to me for reply. You have requested our opinion as to whether XY "Wine Without Alcohol," which is 99.51 percent alcohol free and not carbonated or effervescent, is considered a vinous liquor, the sales of which are subject to sales tax, or whether, due to the low alcoholic content, is a food product, sales of which are not subject to sales tax.

Business and Professions Code section 23004 defines an "Alcoholic beverage" as one which "contains one half of 1 percent or more of alcohol by volume." However, although XY wine would not be considered an alcoholic beverage pursuant to section 23004, we have previously decided that, for sales and use tax purposes, such products are considered wine notwithstanding their containing less than 0.50 percent alcohol. Wine is defined in Webster's Third New International Dictionary to be "the fermented juice of the grape containing varying percentages of alcohol and having a composition and character that depends chiefly upon the grapes used and the climate and soil of the area in which they are grown." (Emphasis added.)

California Sales and Use Tax Law imposes tax on the sale or use of tangible personal property in this state, unless such sale or use is exempt from taxation by statute (see Rev. & Tax. Code §§ 6051 and 6201). Revenue and Taxation Code section 6359 and Sales and Use Tax Regulation 1602, "Food Products", provide that tax does not apply to the sale of food products for human consumption. Specifically excluded from the term "food products" are "spirituous, malt or vinous liquors". (Revenue and Taxation Code § 6359(b)(3), Regulation 1602(a)(2).) In our opinion, the product in question here falls within the category of spirituous or vinous liquors because it is fermented juice of the grape and contains alcohol. It follows, sales of this beverage are not exempt sales of food products but, rather, are taxable sales of tangible personal property.

If you have any further questions, please write this office.

Very truly your,

E. Leslie Sorensen, Jr.
Tax Counse

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