



STATE BOARD OF EQUALIZATION

December 2, 1966

Attention: X-----
Asst. Purchasing Agent

Gentlemen:

This is in answer to your letter of November 28, 1966, concerning the application of sales tax to road oil, and to the beverage, Seven Up, used at the County Hospital as directed by physicians.

We concur with your view that a contractor spreading road oil in place at a lump-sum price is the consumer of the oil, tax applicable only to the sale price of the oil to him. He is a construction contractor under ruling 11, copy enclosed, and the road oil is "materials" as defined in the ruling.

The beverage, Secen Up, however, may not, in our opinion, be regarded as a "medicine" as defined in § 6369 of the Sales and Use Tax Law. That definition is:

"any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use." (Underscoring added.)

Although it would appear extremely doubtful that the beverage, Seven Up, meets the first part of the definition, that is the part not underscored, even if it did, we do not believe it meets the underscored portion of the definition.

Enclosed is a copy of sales and use tax ruling 22 explaining the prescription medicine exemption.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb
Enclosures
Cc: San Jose – District Administrator