



STATE BOARD OF EQUALIZATION

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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
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July 27, 1993

BURTON W. OLIVER
Executive Director

Mr. T--- C---
XXXX --- ---
---, CA XXXXX

This is in response to your letter to the Board of Equalization dated May 28, 1993 in which you state in part:

“Enclosed are labels to feed supplements manufactured by Superior Animal Nutrition of Cattle Probiotic Plus, Calf Probiotic Plus, Cattle Stress Boluses and Calf First Aid. These items are sold to the cattle industry for consumption by dairy and beef cattle. In the past I have not collected sales tax for these items and a dealer of mine is presently charging sales tax for these items. One retail customer of our dealer is complaining and refusing to pay sales tax.”

Attached to your letter were sample labels. These included: “CALF PROBIOTIC – “PLUS”; CATTLE STRESS BOLUS- “The Superior Nutritional Bolus”; CATTLE PROBIOTIC-“PLUS”; and “CALF FIRST AID”. The information provided on these labels includes an analysis of the vitamin content, a list of the ingredients, directions for use and other information about the product along with the name and address of the manufacturer.

Your specific inquiry relates to whether your sales of these labels are subject to the sales tax.

Applicable law

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as “sales tax”) from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.)

Revenue and Taxation Code section 6364 exempts from tax the gross receipts from (1) sales of nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container and (2) sales of returnable containers when sold with the contents in connection with a retail sale of the contents or when sold for resale.

Sales and Use Tax regulation 1589 applies the containers exemption to sales of certain types of labels. Specifically, subsection (b)(2)(B), of regulation 1589 states:

“(2) LABELS. Tax does not apply to sales of labels or name plates if:

(B) The purchaser affixes them to non-returnable containers or property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases to growers, packers, bottlers and others who place the contents in the containers.”

However, certain types of labels are subject to tax. Regulation 1589(c)(1) provides:

“PRICE TAGS. Tax applies to sales of such items as price tags, shipping tags, and advertising matter used in connection with the sale of property or enclosed with the property sold.”

Labels usually considered nontaxable include those which are attached to containers to identify the product or the producer, describe the contents or instruct the consumer on the application or use of the product. That is, the essential function of a nontaxable label is to convey information concerning the product which is placed in the container. BTLG Annotation 196.1935

Applying these guidelines to the sample labels you enclosed, we conclude that these labels are not price tags or shipping tags. Your sales of these labels are exempt from the sales tax if your purchaser affixes these labels to nonreturnable containers of property to be sold or to returnable containers of such property if a new label is affixed to the container each time it is refilled. If the purchaser does not use these labels in this specified manner, then your sales of these labels would be taxable.

All gross receipts from sales of tangible personal property are presumed taxable until the contrary is established. Rev. & Tax Code section 6091. To protect your business, you should obtain an exemption certificate from a purchaser for each sale of these labels if the purchaser will use the labels for an exempt purpose. Otherwise, your sales are presumed taxable until you can establish that they are exempt sales. Exemption certificates are valid only if complete, timely and taken in good faith and should not be accepted for labels such as shipping tags which cannot be exempt.

Your letter does not specify whether you sell these labels at retail or whether you sell them for resale. Only retail sales are taxable. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. Rev. & Tax. Code, § 6007. If the purchaser intends to resell the labels in his or her regular course of business, you may obtain a resale certificate from the purchaser. As with exemption certificates, resale certificates are valid only if complete, timely and taken in good faith. Also, to be valid, a resale certificate must be issued by a purchaser who holds a California seller's permit unless one of the exceptions explained in Regulation 1668 applies.

Regulations 1667 and 1668, which explain what information must be contained in an exemption certificate and a resale certificate and when they must be issued, are enclosed.

We note that you do not have a seller's permit. Under Revenue and Taxation Code sections 6014 and 6066 you are required to have a permit. Please apply for a permit at your local Board of Equalization office immediately.

If you have any further questions regarding sales and use tax law, please do not hesitate to write again.

Sincerely,

Sukhwinder K. Dhandra
Tax Counsel

SKD:ph

Enclosures: Regulations 1589, 1667, and 1668


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October 21, 1993

BURTON W. OLIVER
 Executive Director

Mr. T--- C---
 XXXX --- ---
 ---, CA XXXXX

Re: Application of Tax to Sales of Feed Supplements

Dear Mr. C---:

This is a follow-up letter to our letter of July 27, 1993. We have been notified by the Board's branch office in Modesto that your inquiry related to the application of tax to sales of the feed supplement described on the labels you sent rather than the application of tax to sales of the labels. According to your letter, the items listed on the labels are sold to the cattle industry for consumption by dairy and beef cattle. The "CALF PROBIOTIC-PLUS" and "CALF FIRST AID" are added to milk or water to be given to the cattle. While the label does not indicate how the "CATTLE PROBIOTIC-PLUS" is fed to the cattle, we presume that it is also mixed with milk or water. The "CATTLE STRESS BOLUS" is apparently a pill given to the cattle.

DISCUSSION

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by the gross receipts from retail sales of tangible personal property. Although the sales tax is imposed on the retailer, the retailer may collect sales tax reimbursement from the purchaser under the sale contract. (Civ. Code § 1656.1.)

Revenue and Taxation Code section 6358 exempts from sales and use tax the gross receipts from the sale of "[f]eed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption" (for example, cattle, sheep, baby chicks, hatched eggs, fish and bees), or are to be sold in the regular course of business. Regulation 1587 (copy enclosed) further explains that "feed" includes codliver oil, salt, bone meal, calcium carbonate, double purpose limestone granulars and oyster shells. However, "feed" does not include sand, charcoal, granite grit, sulphur or medicines. It is the actual character of the product rather than statements on labels or tags which determines whether the product is an exempt feed or a taxable medicine. (Annotation 110.360 (5/4/51).)

Vitamins that are sold for the purpose of supplying, and in a form to supply, the nutritional requirements of animal life constitute animal feed. Where, however, the vitamins are sold for use as and in the form of a dosage for the purpose of overcoming a specific deficiency, they are to be regarded as drugs. (Annotation 110.1280 (12/7/51).) Also, when a feed is fortified with drugs or non-nutritive ingredients for the purpose of preventing and controlling disease, the resulting product will still be deemed to be a “feed”. However, if the mixture is for the treatment of disease, then it is regarded as a drug.

The labels you attached list the ingredients in the feed supplement. For example, the “CALF PROBIOTIC-‘PLUS’” contains maltrin as the main ingredient along with a variety of vitamins, including Vitamins A, C, D and E, Niacin, Choline Chloride and Manganese Sulfate. It also contains some sulphur, which under Regulation 1587 is not classified as “feed”. The “CATTLE STRESS BOLUS” and the “CATTLE PROBIOTIC-‘PLUS’” likewise contain some items included within the definition of feed and some items that are not considered feed. As stated above, it is the actual character of the product and its purpose which determines whether it will be exempt as a “feed” or not.

The label for the “CATTLE STRESS BOLUS” indicates that it is for “aiding in the recovery from stress” associated with a variety of events, including new arrivals, scours, shipping fever, pneumonia, depressed appetites, bacterial problems, E. Coli, Antibiotic or Sulfa treatment. This pill is given to the beef and dairy cattle for a limited period of time (three days). Given the concentrated amounts of vitamins and the limited time in which this pill can be given to the cattle, this item appears to have as its purpose the “overcoming of a specific deficiency” and is thus regarded as a “drug”. Sales of the Bolus are not exempt from the sales tax.

The “CALF PROBIOTIC-‘PLUS’” is mixed with water or milk and given to the calves for a period of 30 days. While this product also has concentrated amounts of vitamins, the longer feeding period along with the fact that it is feed to newborn calves, indicates that it provides the normal nutritional requirements to promote growth in the young calves. If so, this item is a “feed” and its sales by your dealer would be exempt from sales tax. Similarly, the “CALF FIRST AID” appears to provide the normal nutritional requirements for a newborn calf.

The “CATTLE PROBIOTIC –‘PLUS’” label does not indicate that it is for the treatment of any specific deficiency nor does it indicate that it is to be fed for a limited time period. While the label is not conclusive of whether this item is a “feed” or not, we assume, from the lack of labelling regarding the treatment of disease, that this item provides the normal nutritional requirements for cattle. If so, it qualifies as a feed.

CONCLUSION

Because the purpose of the "CATTLE STRESS BOLUS" is to overcome the deficiencies from a variety of causes, it is not an exempt feed. Thus, sales by your dealer of this item are subject to tax. The "CALF PROBIOTIC 'PLUS'", the "CATTLE PROBIOTIC 'PLUS'" and the "CALF FIRST AID", if they provide the normal nutritional requirements of the animals and are not for the purpose of treating a specific deficiency, are feed and thus sales of these items are exempt from tax. If you have any further questions, please do not hesitate to write again.

Sincerely,

Sukhwinder K. Dhanda
Staff Counsel

SKD:plh

Enclosure - Regulation 1587