

M e m o r a n d u m**110.0374**

To: Mr. M. Kitchen
Audit Review and Refunds
Room 350

Date: July 19, 1990

From: Stella Levy
Tax Counsel

Subject: Anti Scours Action Program (ASAP)
C--- A--- V--- L--- Inc.
SR -- XX-XXXXXX

Your memo (undated) asks whether ASAP should be categorized as a tax exempt feed under Regulation 1587.

Revenue and Tax Code Section 6358 and Regulation 1587 provide a sales tax exemption for feed, including medicated feed for food animals or for non-food animals which are to be sold in the regular course of business. However, drugs or medicines for animals are subject to sales tax unless furnished by a licensed veterinarian. (Reg. 1506(b)).

ASAP is a non-medicated oral rehydration therapy for young milk-fed calves suffering from scouring and diarrhea. It contains primarily roughage, sweeteners, fat, whey, vitamins, and minerals. The product is mixed with water and fed to young calves in place of milk for several days. It can be used in conjunction with antibiotics and provides "a rapidly available energy source for the weak calf."

In the case of animal feed, unlike food products for human consumption, it is the "[a]ctual [c]haracter of [the] [p]roduct, rather than statements on [the] label or tag, [which] determines whether the product is an exempt feed or [a] taxable medicine." (Anno. 100.0300 5/4/51.) If the product itself has significant nutritional value, or if it is incorporated into a mixture which has significant nutritional value, it is tax exempt. (See Reg. 1587 (b) (l) and Annos. 110.0600, 110.0400.)

It appears that ASAP has significant nutritional value and therefore, qualifies as a tax-exempt feed. ASAP replaces milk feeding in the calf's diet and contains nutrients. ASAP is "non-medicated" or "drug-free."

Please feel free to call me if you have further questions.

SL:cl