

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-2641

July 30, 1984

Ms. [S]
[D]
P.O. Box XX
---, CA XXXXX-XXXX

S- – XX-XXXXXX

Dear Ms. [S]:

This is in reply to your letter dated June 1, 1984. You request our opinion as to the correct application of tax to the sale of "Sustacal" and "Advance" concentrated foods. Also, your inquiry concerns the application of tax to the sale of drug syringes.

"Sustacal", a product of Mead Johnson, is a nutritionally complete food in liquid form. This product may be used either as a meal substitute or taken as a person's sole source of nutrition. "Advance," a product of Ross Laboratories, is a nutritional beverage which is specifically formulated to meet the total nutritional requirements of older babies. This product is recommended for use either as a supplement to mother's milk, or as an alternative to cow's milk.

It is our opinion that both Sustacal and Advance qualify as food products for human consumption pursuant to Section 6359 of the Revenue and Taxation Code and Sales and Use Tax Regulation 1602. Therefore, the sale of these products is not subject to tax.

With regard to your inquiry concerning the sale of drug syringes, you ask whether a syringe qualifies as a tax exempt medicine because it is prescribed by a physician. Also, you ask whether the sale of insulin syringes is exempt from taxation.

In general, syringes do not qualify as tax exempt medicine under Regulation 1591, notwithstanding the fact the syringe is prescribed by a physician. However, an exception to this general rule applies to the sale and use of "insulin syringes." As provided under Sales and Use Tax Regulation 1591(h), the sale and use of "insulin syringes" is not subject to tax on or after January 1, 1983, provided the insulin syringes are furnished by a registered pharmacist to a person for the treatment of diabetes as directed by a physician.

Ms. [S]

2

July 30, 1984
245.1780

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

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba