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STATE OF CALIFORNIA

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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

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September 21, 1994

Mr. []
[R]
--- --- XXX
P.O. Box XXX
---, California XXXXX

Re: S- -- XX-XXXXXX
Garlic Cooking Wine

Dear Mr. [R]:

I am responding to your letter dated August 25, 1994, to Assistant Chief Counsel Gary J. Jugum. You ask if sales tax applies to your sales of Garlic Cooking Wine. You attached to your letter two labels for White and Red Garlic Cooking Wine and also a bottle of the white. Although the label does not say, you indicate that the wine is a “non-drinkable beverage and produced for the sole purpose of cooking....”

OPINION

A. Sales and Use Tax Generally

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) “[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ...” (§ 6091.) “Exemptions from taxation must be found in the statute.” (Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 PO.2d 201.]) “The taxpayer has the burden of showing that he clearly comes within the exemption.” (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Food Products Exemption

Section 6359, as interpreted and implemented by Regulation 1602, provides an exemption from sales and use taxes for sales of food products for human consumption under certain circumstances. Sub-divisions (1) & (2) of Regulation 1602(a) contain lists of products which, either singly or in combination, are considered "food products." (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) Sub-division (a)(2) specifically excludes "vinous liquors" from the definition of "food products."

We have previously determined, however, that where a vinous liquor, such as cooking wine, is considered to be "rendered unfit for beverage use" under Internal Revenue Code Section 5362 and so may only be used for cooking, then it qualifies as an exempt food product. Because you indicate in your letter that the wine is not drinkable, it may very well qualify. If so, its sales would be exempt from tax. Please be advised that this letter does not qualify as written advice that sales of the wine are not subject to tax under Section 6596, because we do not know if the wine comes under this Internal Revenue Code section.

For your information, I have included a copy of Regulation 1602. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosure: Reg. 1602

cc: -- - District Administrator