


**STATE BOARD OF EQUALIZATION**

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January 27, 1995

Ms. [D]

[M]

XXXX --- ---

---, California XXXXX

RE: [No Permit Number]  
 Flavored Mineral Waters

Dear Ms. [D]:

Mr. Mike Loretta of our Return Review Section has asked the Legal Division to reply to your letter to the State Board of Equalization dated November 1, 1994. You ask for clarification as to the taxability of sales of bottled water, flavored mineral waters, such as Koala Springs, flavored waters such as Mystic and Snapple, any other "soft drinks" which are not juices but are also not carbonated, and canned ice teas. You indicate that these products seem to be a source of "great confusion," and enclosed a copy of page 5 of Pamphlet Number 31, "Tax Tips for Grocery Stores" (July 1993 ), which states that sales of "carbonated, effervescent, and noneffervescent bottled water are taxable." Since you did not identify the taxpayer, this letter does not constitute specific written advice to the taxpayer under Revenue and Taxation Code section 6596. Rather, it constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts.

OPINION

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.) 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. Subdivisions (1) and (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.)

Subdivision (a)(1) specifically lists “tea” as a food product. Effective October 29, 1994, subdivision (a)(2) reads, in part, as follows:

“‘Food products’ include all fruit juices, vegetable juices, and other beverages, whether liquid or frozen, including all beverages composed in part of fruit or vegetable juice and concentrates, powders, or other bases for such beverages, and noncarbonated and noneffervescent bottled water intended for human consumption regardless of the method of delivery. ‘Food products’ does not include carbonated or effervescent waters, spirituous, malt or vinous liquors, or carbonated beverages.”

Teas which do not claim medicinal qualities or the labels of which do not indicate specifically that they are sold as dietary supplements are considered food products the sales of which are exempt from tax. (Annot. 245.1090, Sales and Use Tax Annotations, are excepts from previous Board staff opinion letters and serve as guides to staff positions.) We have previously determined that the term “other beverages” includes all noncarbonated nonalcoholic drinks (except for water), flavored or otherwise. Thus the products you list qualify under the above authority as “food products” the sales of which are exempt from tax.

I do have a question about Koala Springs Mineral Water. You indicate that it is a noncarbonated flavored mineral water. It has been claimed in other contexts, however, that this product is in fact carbonated. If that is true, it is excluded from the definition of “food products” under the above authority with the result that its sales are subject to tax.

Thank you for bringing to our attention the apparent inconsistency in Pamphlet 31. I am, by copy of this letter, notifying our Forms and Publications Section of the problem for their action.

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

Sincerely,

John L. Waid  
Tax Counsel

JLW:sr

Enclosure: Reg. 1602

cc: Ms. Mary Claus (MIC:58)- Please look into this problem.  
The cited sentence appears to be internally contradictory.

Oakland District Administrator – CH