

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3824

February 5, 1992

Ms. [S]

P. O. Box XXX
--- ---, CA XXXXX

RE: SR -- XX-XXXXXX
Nature's Sunshine Herb Capsules

Dear Ms. [S]:

The Santa Rosa District has requested that the Legal Division reply to your letter of January 13, 1992, to the District.

As I understand it, you sell certain herb products. You have inquired if these products are food products the sales of which are exempt from sales tax. You attached to your letter a label from a container of these capsules. According to the label, this product, Nature's Sunshine Three, is an herbal food combination containing kelp plant, dandelion root, and alfalfa herb. The label makes no medicinal claims for the product nor does it state that the product is to be used as a dietary supplement or adjunct. We assume that the lack of claims for use of this product as a medicine or dietary supplement or adjunct on this label is typical of all of the herb capsules that you sell.

OPINION

In interpreting and implementing the broad provisions of Revenue and Taxation Code Section 6359(c), Sales and Use Tax Regulation 1602(a)(5) sets up a two-step analysis. The threshold question is whether or not the food product under discussion is in one of the enumerated forms – liquid, powdered, granular, tablet, capsule, lozenge, or pill. If so, then its sales are taxable if one of the two following conditions also occurs: (A) its label or package describes it as a food supplement, food adjunct, dietary supplement, or dietary adjunct; or (b) it is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally the intake of vitamins, protein, minerals, or calories.

We have concluded in prior opinions that herbal preparations the labels or packages of which make no claims for the products as being medicines or dietary adjuncts or supplement are food products the sales of which are exempt from tax. (II Bus. Tax. L. Guide, Annot. 245.0500.) We do not consider the fact that the preparations that you sell come in capsules as changing the above result. We have previously determined that herbal preparations in capsule form for which none of the above-mentioned claims are made are "usual foods" within the meaning of Regulation 1602(a)(5). Therefore, your sales of such products are exempt from tax.

For your information, I have enclosed 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: Regulation 1602

A "medicinal claim" on the product label is no longer used as a basis for differentiating a food product from a medicine. Please see Annotation 245.0724 (11/17/08). RDT. 7/2/09.
