

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 322-3684

January 8, 1986

Mr. [F]
Corporate Tax Manager
[N]
P.O. Box XXXX
--- ---, -- XXXXX

Dear Mr. [F]:

This is in reply to your letter of November 25, 1985. You request an opinion on whether the sale of bee pollen is subject to California sales tax. Enclosed with your letter were the labels from the bulk bee pollen and the encapsulated bee pollen that you sell.

The label for the bulk bee pollen indicates that it is a "natural food supplement". As we understand it, the most common uses for the bulk bee pollen are as a food or as a sugar substitute. Your letter indicates that people usually eat it plain or sprinkle it over their cereal.

The label for the encapsulated bee pollen recommends that the user take "two capsules with two meals each day or as desired, as an addition to the everyday diet." (Emphasis added.)

California Sales and Use Tax Law imposes a tax on the sale or use of tangible personal property in this state, unless the sale or use is otherwise exempt from taxation (Rev. & Tax. Code §§ 6051 and 6021). As provided under Revenue and Taxation Code section 6359 and Sales and Use Tax Regulation 1602 (copy enclosed), tax does not apply to the sale or use of "food products" for human consumption. Regulation 1602(a)(5), which interprets and applies section 6359, provides that:

"(5) 'Food products' do not include any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form (A) which is described on its package or label as a food supplement, food adjunct, dietary supplement or dietary adjunct, and to any such product

* * * *

“...[U]nusual foods such as brewer’s yeast, wheat germ and seaweed are not subject to tax except when their label states they are a food supplement or the equivalent”

We have held in the past that bulk bee pollen that is not described on the package or label as a “food supplement” is classified as a “food product” , the sale of which is exempt from tax pursuant to section 6359. However, since you have labelled the bulk bee pollen you sell as a “food supplement”, we are of the opinion it is not a “food product” pursuant to Regulation 1602(a)(5) and therefore the sale of [N]’s (bulk) Bee Pollen is subject to tax.

We have also held in the past that encapsulated bee pollen falls within the category of “unusual foods” as long as the label does not describe the bee pollen as a “food supplement or the equivalent” pursuant to Regulation 1602(a)(5). We are of the opinion that the phrase “as an addition to the everyday diet” on the label of [N]’s --- Bee Pollen Capsules is the equivalent of a “food supplement” and therefore your sale of bee pollen in capsules is also taxable.

We note that if the phrase “natural food supplement” on the label of [N]’s --- (bulk) Bee Pollen, and the phrase “...as an addition to the everyday diet” on the label of [N]’s --- Bee Pollen Capsules are removed, then both products would be considered “food products” pursuant to previous opinions and their sale would be exempt from California sales tax.

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

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr
Enc.