

**STATE BOARD OF EQUALIZATION**

November 19, 1971

[X]

Attention: [Z]

Dear [Z]:

This is in regard to your conversation of November 2, 1971 with Mr. G. L. Marks of our Hollywood office. You informed Mr. Marks that several members of the Association questioned the tax-exempt status of [X]'s Hi-Proteen. In their view the February 7, 1958 opinion (CTS annotation 245.1420) was inconsistent with the fact that all other high protein products processed by [X] were classified as taxable and especially inconsistent with the guidelines as recommended by Mr. Nevins' December 3, 1970 memorandum, which was distributed to members of the Association.

After reviewing the material forwarded to me by Mr. Marks, I agree that the present classification of [X]'s Hi-Proteen as an exempt food product is incorrect. Such classification particularly conflicts with that portion of Mr. Nevins' memorandum stating:

“ ... any product which describes itself as a ‘protein’, ‘vitamin’ or ‘mineral’, includes protein, vitamin or mineral in its name, or otherwise emphasizes its protein, vitamin or mineral content will be taxable. Of course, the product must be in liquid, powdered, granular, tablet, capsule, lozenge or pill form.”

Consequently, effective January 1, 1972, the classification of [X]'s Hi-Proteen will be changed to that of a dietary supplement or adjunct, the sales of which are subject to sales tax. We believe the prospective effect given the change is called for by the tax liability that would otherwise be incurred by the retailers who have relied on the present classification. By copy of this letter, we will request that the California Tax Service listing of [X]'s Hi-Proteen be changed from exempt to taxable.

We appreciate the interest of the Association in aiding us to uniformly administer this difficult provision of the Sales and Use Tax Law. If we may be of further assistance, feel free to contact us.

Very truly yours,

Donald J. Hennessy  
Legal Counsel

DJH:lb