



STATE BOARD OF EQUALIZATION

(916) 327-3400

August 23, 1989

Ms. [S]

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F- -- XX-XXXXXX

Dear Ms. [S]:

I am writing in response to your June 5, 1989 request for legal advice regarding the application of sales tax to certain items sold at the [store]. I am enclosing the Board's publication entitled "Tax Tips for Grocery Stores" which provides useful guidance and contains the relevant regulations.

Generally, sales of food products for human consumption are exempt from taxation. Revenue and Taxation Code Section 6359 (enclosed) provides at subsection (c) that "[f]or purposes of this section 'food products' do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts." The following discussion clarifies the applicability of the rules to the specific items mentioned in your letter.

Herbal Extracts

These are plant extracts which have been cold processed in a mixture of alcohol and water. They are sold in a one-ounce bottle with a dropper. The label states "for use as a beverage."

The herbal extracts as described are exempt food products provided that they are sold as a beverage and provided that the label or packaging makes no claim to the product's medicinal or curative qualities or to a dietary benefit.

### Essential Oils

These are products such as oil of clove, oil of fir, oil of lemon, etc. The oils are sold in one ounce bottles with no dropper. The labels contain no statement as to use. However, it is my understanding that “essential oils” sold in one ounce bottles are generally used as scents and not meant to be ingested. If this is correct, then the essential oils are not food products and are subject to sales tax. If you disagree with this, please send further information as to the use of “essential oils.” You should indicate the type of oil in which the essence is suspended, e.g., mineral, safflower, etc., as this information would be helpful in determining whether essential oils are food products.

### Ginseng Root/Royal Jelly

This is sold as a whole or sliced dried root in a vial of liquid. The label states “liquid tonic to be taken orally. Ingredients: 20 mg. ginseng and 300 mg. royal jelly.” This product is exempt as a food product provided the label or package makes no claim of medicinal qualities or indicates that the product is sold as a dietary supplement or adjunct.

### Bee Pollen

This product is sold in whole, bulk form.

Bee pollen is an exempt food product provided the label or package makes no claim of medicinal qualities or indicates that the product is sold as a dietary supplement or adjunct.

### Lecithin

This product is sold in whole, bulk form.

Lecithin is an exempt food product provided the label or package makes no claim of medicinal qualities or indicates that the product is sold as a dietary supplement or adjunct. Please note that the section entitled “classification of products sold by grocers” at pages 22-30 of the enclosed publication lists both “lecithin complex” and “super lecithin” as taxable items. These products are taxable because they are sold as dietary supplements.

### Alfalfa Seeds

This product is sold in whole, bulk form. The seeds are used to make alfalfa sprouts.

Sales and Use Tax Regulation 1588 (enclosed) provides, in relevant part, that “[t]ax does not apply to sales of seeds ... the products of which ordinarily constitute food for human consumption....” Therefore, alfalfa seeds used to make sprouts are exempt from sales tax.

Dried Seaweed, Algae, and Wheatgrass

These products are sold in powdered form.

Regulation 1602(a) provides that “[t]ax does not apply to sales of food products for human consumption” (with certain exceptions). The definition of “food product” includes “health foods.” (Reg. 1602(a)(1).) Further, “unusual 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.” (Regulation 1602(a)(5).) Dried seaweed, algae, and wheatgrass in powdered form are exempt food products provided that the label or packaging makes no claim to the product’s medicinal or curative qualities or to a dietary benefit.

Please feel free to contact this office if you have further questions regarding the applicability of sales tax to items sold at the [store].

Sincerely,

Stella Levy  
Tax Counsel

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Enclosures

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.
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