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March 16, 1998

Ms. [K]
 [F]
 XXXX --- ---
 ---, --- XXXXX-XXXX

Re: [X]
No Seller's Permit

Dear Ms. [K]:

This is in response to your letter dated February 20, 1998, in which you ask how tax applies to sales of juice products sold at retail by grocery stores. You enclosed with your letter, as an example, a label from a product called "Simply Nutritious Mega C," identified as a "delicious strawberry flavored beverage from concentrates," with one thousand percent of the recommended daily allowance of vitamin C added. The label states that the product contains eighty-six percent juice.

In your letter, you indicated your understanding that under Revenue and Taxation Code section 6359(a), the general rule is that sales of food products for human consumption are exempt from tax. As explained in Regulation 1602(a)(2), non-carbonated fruit and vegetable juices are generally deemed to be such food products the sales of which are exempt from tax.

However, where the label or packaging describes such juices as food or dietary supplements or adjuncts, or where the products are designed for the purpose of weight management or for the purpose of providing a high nutritional source, they are excluded from the definition of "food products" under subdivision (a)(5) of Regulation 1602. Sales of products that are excluded from the definition of "food products" are not exempt from tax under Regulation 1602.

Nevertheless, subdivision (a)(5) also provides that the compounding of nutritional elements in items traditionally accepted as food (e.g., vitamin enriched milk and high protein flour) does not make the items taxable. Thus, even if it could be argued that a particular product is designed for the purpose of providing a high nutritional source, if the product is traditionally accepted as food, the compounding of nutritional elements in that product will not keep it from being considered a food product the sales of which are exempt from tax.

The label for "Simply Nutritious Mega C" does not contain any information indicating that the product is marketed or sold as a medicine, or as a food or dietary supplement or adjunct. It appears from the label that the product is simply a non-carbonated fruit juice that has been fortified with vitamin C. As such, sales of this product are exempt from tax under Revenue and Taxation Code section 6359. Sales of other non-carbonated fruit juices not marketed or sold as medicines or food or dietary supplements or adjuncts are also exempt from tax under section 6359.

If you have further questions, please feel free to write or call me at the address or telephone number listed above.

Sincerely,

Kelly W. Ching
Tax Counsel

KWC:cl

cc: Out-of-State District Administrator (OH)

<p>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.</p>
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