

**STATE BOARD OF EQUALIZATION**

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October 25, 1989

Mr. [W], C.P.A.

[W]

XXX --- ---, Suite XXX  
--- ---, California XXXXX

Re: Wonder Bee Royal Jelly  
Kiku Royal Jelly

Dear Mr. [W]:

This is in response to your letters of September 15 and 25, 1989 to Mr. Gary Jugum. You have requested our opinion regarding the correct application of tax to your client's retail sales of two royal jelly products. Specifically, you wish to know whether these products qualify as exempt food products under Revenue and Taxation Code Section 6359 and Sales and Use Tax Regulation 1602. The two products in question are Wonder Bee Royal Jelly and Kiku Royal Jelly.

Wonder Bee Royal Jelly is sold in capsule form. It contains royal jelly blended with wheat germ oil, pure honey, and soya lecithin. Its label contains information regarding the capsule's contents and no further description.

Kiku Royal Jelly is also sold in capsule form. It is described on its label as a "nutritional dietary food supplement."

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, 6201). As provided in Revenue and Taxation Code Section 6359 and Sales and Use Tax Regulation 1602, 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 ....

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“... [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 ....” (Emphasis added.)

As you point out in your letter, we have held in the past that encapsulated royal jelly falls within the category of an “unusual food” as long as the label does not describe the royal jelly as a “food supplement or the equivalent” pursuant to Regulation 1602(a)(5). Wonder Bee Royal Jelly is not described on its label or its accompanying literature as a dietary or food supplement. It would therefore be considered an “unusual food” and tax will not apply to its sale. We are of the opinion that the Kiku Royal Jelly does not qualify as an exempt food product because it is clearly described on its label as a dietary supplement. Tax will apply to your client’s retail sale of this product.

We note that because you have not identified your client, this letter may not be treated as a binding opinion pursuant to Revenue and Taxation Code 6596. If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong  
Senior Tax Counsel

MCA:wak