

**STATE BOARD OF EQUALIZATION**

916-445-8485

March 5, 1987

[X]

Re: [X]

Dear [X]:

This letter is in response to your request for an opinion regarding the sales tax status of the following products: [T] Sparkling Grape Juice, [S] Natural Juice Sparkler, [K] Sparkling Mineral Water Juice, [M]'s Pink Sparkling Grape Juice, and [M] Brand Lecithin Granules.

California Sales and Use Tax Law imposes sales tax on retailers based on gross receipts from the sale of tangible personal property in this state unless such sale is otherwise specifically exempted from taxation by statute (Rev. & Tax. Code § 6051). Section 6359 of the Revenue and Taxation Code exempts "food products" from sales tax.

Sales and Use Tax Regulation 1602 provides:

(2) "Food products" also include all fruit juices, vegetable juices, and other beverages, whether liquid or frozen, including all beverages composed in part of fruit or vegetable juice and concentrates, powders, or other bases for such beverages, except: water, including mineral, bottled, and carbonated waters, spirituous, malt or vinous liquors, or carbonated beverages.

* * *

(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 (B) which is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally one or more of the following areas of human nutrition:

1. Vitamins
2. Proteins
3. Minerals
4. Caloric intake

In determining whether a product falls within category (B), it is important whether the manufacturer has specially mixed or compounded ingredients for the purpose of providing a high nutritional source. For example, protein supplements and vitamin pills are taxable as food supplements.

We have held in the past that only those carbonated products which are considered natural fruit juices will qualify as exempt food products under Regulation 1602. If the carbonated product includes a preservative, such as sodium benzoate, or any other additive, it will not be considered a natural fruit juice and tax will apply to its sale.

[T] Sparkling Grape Juice, [K] Mineral Water Juice and [M]'s Pink Sparkling Grape Juice are carbonated fruit juices and all contain preservatives. Therefore, sales of such products are not exempt from sales tax. [S] Natural Juice Sparkler, however, is 100 percent natural juice and contains no additives or preservatives and is, therefore, exempt from sales tax.

[M] Brand Lecithin Granules is described by its label as a natural product derived from the soybean which can be added to your diet by blending it with your favorite juice or beverage. We are of the opinion that [M] Brand Lecithin Granules qualifies as a "food product" pursuant to Regulation 1602 because it is not described on its label as a food supplement, food adjunct, dietary supplement, or dietary adjunct, nor does its label indicate that the product is designed to increase or decrease the user's vitamin, protein, mineral, or caloric intake.

Very truly yours,

E. L. Sorensen Jr.
Tax Counsel

ELS: