



STATE BOARD OF EQUALIZATION

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November 27, 1991

Burton W. Oliver
Executive Director

Mr. [V]
[P]
XXX --- ---
P.O. Box XXXX
--- ---, CA XXXXX

Re: [S]

Dear Mr. [V]:

This is in response to your letter of September 17, 1991. We met here in Sacramento on November 15, 1991 to discuss the taxability under the Sales and Use Tax Law of certain products of your client [S].

It is our opinion that [S] Instant Protein Drink Mix is a taxable product by virtue of the fact that the label now provides as follows:

“Notice: Use this product as a food supplement only. Do not use for weight reduction.”

Under our Regulation 1602(a)(5), the term “food product” does not include any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form which is described on its package or label as a food supplement, food adjunct, dietary supplement, or dietary adjunct.

This office had previously issued its opinion that this product qualified for exemption as a food product. Under the circumstances of this case we believe it appropriate to reclassify this product as a taxable item on a going forward basis, effective January 1, 1992. Retail sales of this product prior to this date will be regarded as nontaxable by this agency.

It is our opinion that the other three items which are the subject of your inquiry – [S] --- --- Drink Mix, [S] --- Shakes and [S] --- --- Mix – all qualify as food products under our Regulation 1602, for periods prior to your inquiry and on a current and continuing basis.

Mr. [V]

-2-

November 27, 1991
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We again extend to you our apologies for the delay in our reply (and the summary nature of this letter); however, you are aware of the limitations under which we are presently operating.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:wk

Transmitted by Facsimile

cc: Mr. Glenn A. Bystrom
Mr. John L. Waid