



STATE BOARD OF EQUALIZATION

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January 21, 2005

RAMON J. HIRSIG
Executive Director

[X]
ABC

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Re: [No Permit Number]
Juices and Thickened Juice Cups

Dear [X]

I am responding to your letter to Janice L. Thurston, Assistant Chief Counsel of the State Board of Equalization's Legal Department, dated September 9, 2004. You indicate that your company manufactures and sells in 4 fluid-ounce shelf-stable plastic cups a variety of juices and thickened juices for people with swallowing defects. You asked if sales of these products are subject to tax.

You included with your letter flyers showing various products your company sells. The flyers come from two companies, yours and one other.

In your letter, when you asked about the "CRV tax," I had assumed you were asking about whether or not sales of these products were subject to sales tax. In our telephone conversation on October 26, 2004, you confirmed you were also asking if ABC was required to make the California Redemption Value (CRV)¹ payment when buying these products. As we discussed over the phone, the State Board of Equalization does not administer the CRV program, and so we cannot answer that question. I did, though, refer you to the Department of Conservation for an answer.

¹ Pub. Resources Code, § 14560.5(c)(2).

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.)²

B. Food Products Exemption.

Section 6359, as interpreted and implemented by Regulation 1602, provides an exemption from sales and use taxes for sales of food products for human consumption under certain circumstances. Subdivisions (1) & (2) of Regulation 1602(a) contain lists of products which, either singly or in combination, are considered “food products.” (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) Subdivision (a)(2) lists fruit juices, “including all beverages composed in part of fruit or vegetable juice and concentrates,” as food products.

Items specifically compounded for the purpose of providing a high nutritional source are excluded from the definition of “food products.” On the other hand, the mixing of nutritional elements in items traditionally accepted as food products does not cause their sales to be subject to tax. (Reg. 1602(a)(5).)

C. Tax Consequences.

1. Shelf Stable Portion Juices and Juice Cups. The products are called “juices” or “juice cups,” depending on who makes them, but they appear to be identical products. The products are listed as 100% apple, orange, grape, grapefruit, pineapple, and prune juice, and cranberry cocktail. The flyers state that the products “feature a proprietary processing method that flash pasteurizes and cools to ensure the freshest flavor and brilliant color. Each cup includes ‘Use By’ date coding with easy open peel off lids.” The flyers show that the products are shipped in individually sealed cups that may be stored on the shelf at moderate temperatures for up to six months. The juices are described as “100% juice” and the cranberry cocktail is described as “27% juice.” All are described as “fortified with 100% Daily Value of Vitamin C.”

To be considered a “fruit juice” under Regulation 1602, a product does not have to contain 100% fruit juice as long as the juice is not carbonated. (Reg. 1602(a)(2); Annot. 245.0285 (3/5/87). Sales and Use Tax Annotations are excerpts from previous opinions of the Legal Department.) As noted above, under Regulation 1602 (a)(5), sales of the juices are not made subject to tax just because the juices are fortified with Vitamin C. As a result, the juices and cranberry cocktail qualify under the regulation as food products the sales of which are not subject to tax.

² As we discussed over the phone, the CRV payment is included in gross receipts. (§ 6012(a)(2).)

2. Thickened Juices & Beverages. Again, these products come from two different manufacturers, your company and one other, and are called something slightly different, but the flyers attached to your letter describe them the same way: “[S]pecially formulated to assist health care operators with the dietary management of residents with dysphagia. The smooth consistency ensures a safe swallow.” These products also come in pre-packaged containers that do not require refrigeration until opened for serving. They come in 46-ounce bulk packages and 4-ounce individual sealed cups. The pictures of the products indicate that they contain 100% fruit juice, and the flyers state that the juices provide 100% of the minimum daily RDA of Vitamin C.

Though the products are given to persons with a medical problem, they are given to deal with the patients’ nutritional needs. Foods and medicines are mutually exclusive categories with different requirements for exemption from tax. (Reg. 1602(a)(4).) For that reason, we apply the rules regarding the taxation of sales of food products rather than the sales of medicines to the sales of these products. Thus, under the criteria set forth in Regulation 1602(a)(2) and (a)(5), the thickened juices and beverages qualify as food products the sales of which are not subject to tax.

3. Containers. Regulation 1589(b)(1)(D), interpreting and implementing section 6364(b), provides that tax does not apply to the sales of containers “sold or leased with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or the use tax.” As noted above, the flyers show that the products come pre-packaged and are sold in their containers. Thus, we conclude that tax also does not apply to the portion of the gross receipts represented by the cost of the containers. As a result, the gross receipts from the retail sales of these products are not subject to tax.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Senior Tax Counsel

JLW:ef

cc: Ventura District Administrator (AR)