

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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November 16, 1981

Mr. [C]
President

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Dear Mr. [C]:

This is in reply to your letter of October 8, 1981. You have requested our opinion concerning the correct application of tax to your sales of ANABAENA Flos Aqua. Specifically, your inquiry concerns whether or not this product qualifies as an exempt "food product" under Sales and Use Tax regulation 1602.

As we understand it, ANABAENA Flos Aqua is a freeze dried product consisting of pure premium blue-green algae. It is labeled as a pure-food product and contains naturally chelated vitamins, minerals, lipids, nucleic acids, chlorophyll, amino acids and enzymes.

Sales and Use Tax Regulation 1602, "Food Products," (copy enclosed) provides that tax does not apply to the sale of food products for human consumption. It further provides that the term "food products" does 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.

Other items, such as cod liver oil, halibut liver oil, and wheat germ oil, are considered dietary supplements and thus subject to tax even though not specially compounded. However, unusual 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. Finally, the compounding of nutritional elements in items traditionally accepted as food does not make them taxable, e.g., vitamin-enriched milk and high protein flour." (Emphasis added.)

To the extent the label of the type of ANABAENA Flos Aqua you sell does not purport to make any claims as a dietary supplement, we would consider ANABAENA Flos Aqua to fall within the definition of a "food product" as that term is used in regulation 1602. As such, tax would not apply to your sales of ANABAENA Flos Aqua.

If you have further questions concerning this matter, please write this office.

Very truly yours,

Mary C. Armstrong
Tax Counsel

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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.