



**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
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(916) 445-3237

April 27, 1981

Mr. [H]

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P. O. Box ---

--- ---, CA XXXXX

RE: S- -- XX-XXXXXX  
S- -- XX-XXXXXX

Dear Mr. [H]:

This is in response to your letter of April 9, 1981. You have requested an opinion from this office regarding the correct application of tax to your sales of Spirulina Plankton.

We understand that Spirulina Plankton is a dehydrated vegetable, aquatic plant organism which is highly nutritious. It is a food source containing up to 71 percent vegetable protein, 18 of the 22 amino acids, and has high concentrations of vitamins, minerals, trace elements, and chlorophyll.

In your letter, you enclosed a sample label for your product. The label states the following:

“--- ---  
--- --- Spirulina  
Plankton  
Powder”

“Nutrition Information per serving

Serving Size:	3 teaspoons
Calories:	80
Protein:	65-71%
Fat:	6%

Fiber:	1.5%
Carbohydrates:	13%
Minerals:	6-9%
Moisture:	4-7%
Selenium:	0.4ppm

Distributed by: Dr. --- ---, PHD., DSc.  
Author of “--- --- ---”  
P. O. Box XXX  
--- ---, CA XXXXX  
(XXX) XXX-XXXX (--- - ---)

Sales and Use Tax Regulation 1602 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 labeling on your product --- --- Spirulina Plankton Powder” does not make any claims concerning possible medicinal benefits and is not labeled as a dietary supplement, we would consider it to fall within the definition of a “food product” as that term is used in Regulation 1602. As such, tax does not apply to your sales of plankton powder.

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

Very truly yours,

Mary C. Armstrong  
Staff Counsel

MCA:ba

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.