

**STATE BOARD OF EQUALIZATION**

(916) 322-3684

May 22, 1986

Ms. [M]
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Dear Ms. [M]:

Your letter requesting an opinion concerning the correct application of tax to the sale of FIBERMED biscuits has been referred to me for a response.

Enclosed with your letter is an empty FIBERMED container which describes the product as a "High-Fiber Supplement". The list of ingredients on the side panel indicates the product is made with corn bran, brown sugar, wheat flour, corn starch, wheat bran, oat flakes, corn germ meal, vegetable shortening (partially hydrogenated soybean oil), sodium bicarbonate, vanilla flavor, peanut butter flavor, ammonium bicarbonate, baking acid, sodium propionite, salt and citric acid. These ingredients are blended and baked into biscuits for consumption. You request our opinion as to whether FIBERMED biscuits are a food product the sale of which is exempt from tax or a "taxable food supplement".

Revenue and Taxation Code section 6051 imposes tax on the sale of tangible personal property in this state unless such sale is specifically exempted from taxation by statute. Section 6359 of the Code exempts the sale of food products for human consumption from tax. Section 6359(b)(1) defines "food products" to include "cereals and cereal products, ... vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products" Section 6359(c) provides that "food products" do not include "medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts" (emphasis added).

Applying the above criteria, we are of the opinion that FIBERMED biscuits, as described, are a cereal product and therefore a food product pursuant to section 6359(b)(1). Accordingly, sales of FIBERMED biscuits are exempt from tax. FIBERMED biscuits are not "food supplements" pursuant to section 6359(c) since they are not prepared in a liquid, powdered, granular, tablet, capsule, lozenge or pill form.

We hope the above information is helpful. Enclosed for your review and reference is a copy of Sales and Use Tax Regulation 1602 (Food Products) which interprets and applies the Code. If you have any further questions on this topic, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr

Enc

cc: J. Fisher – Culver City Auditing
M. M Laxer – Culver City Auditing
Director, [K]
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