

M e m o r a n d u m**245.1900**

To: Sacramento District (PZ)

October 1, 1984

From: Charles J. Graziano

Subject: [G]
[B]
S- -- XX XXXXXX

This is in reply to your mini-memo dated August 27, 1984. You request our opinion as to the correct application of tax to "Vantage Plus," a product distributed by [P]. You have provided for our review a label from this product.

As you know, in our memo of January 20, 1983 to Mr. Leon Adams, we stated that "Waist-Away Control," another product distributed by [P], does not qualify as an exempt food product pursuant to Sales and Use Tax Regulation 1602(a)(5)(B). The basis for our opinion in this matter is that the label for this product indicates that Waist-Away Control is designed to aid in weight reduction by decreasing the user's caloric intake and by increasing the user's intake of vitamins and proteins. It appears to us that Vantage Plus is a product which is identical in all respects to Waist-Away Control, except for the different product labels.

The label from Vantage Plus states that the product is "A Complete Meal Replacement," and that it can be used as a "nutrition enhancer" or "nutritious alternative," i.e., it is a powder which can be mixed with other foods and beverages. The principal ingredients of Vantage Plus are isolated soy protein, fructose, soy bran, natural flavors and various minerals and vitamins. Unlike the label from Waist-Away Control, the label from Vantage Plus does not indicate that the product is designed to increase or decrease the user's vitamin, protein, or caloric intake. Furthermore, the Vantage Plus label does not describe the product as a dietary or food supplement. Notwithstanding the fact that both Vantage Plus and Waist-Away Control are essentially the same product, it is our opinion that Vantage Plus is not sold as a dietary supplement or adjunct. Therefore, Vantage Plus qualifies as a tax-exempt food product for human consumption under Regulation 1602. Since Waist-Away Control is sold as a dietary or food supplement, however, we remain of the opinion that the product sold under the Waist-Away Control label is not a tax-exempt food product.

CJG:ba