M e m o r a n d u m

245.0640

To: Evaluation & Planning (RI)

Date: March 24, 1970

From: Tax Counsel (LAA)

Subject: [X]

On March 11, 1970 you forwarded a letter from "B" and asked that I reply to it. You will receive a copy of the reply, but I thought a more complete explanation was in order.

Revenue and Taxation Code Section 6359 defines "food products" to include "all fruit juices, vegetable juices, and other beverages except bottled water, spirituous, malt or vinous liquors or carbonated beverages, whether liquid or frozen."

Ruling 52 expands slightly on that definition by adding the phrase "including all beverages composed in part of fruit or vegetable juice."

Beverage is defined by Webster simply as "liquid for drinking." Section 6359 and Ruling 52(a)(4) go on to provide, however, 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."

In Knox Gelatine Drink we find a product which fits both the definition of an exempt beverage and a taxable dietary supplement.

On the one hand, it is a beverage; and it apparently contains some fruit juice in its natural flavoring. It also is gelatine, which is separately defined by Ruling 52(a) (1) as a food product.

On the other hand, it is intended to be used by persons who have nail problems as an alternative and more pleasant way of taking in gelatine. It is so described on its package, and in addition emphasizes the supplementary protein and vitamin C which is supplied by the product. I doubt if anyone would choose to drink it merely for its beverage qualities, but rather it would only be consumed by those who desired its medicinal qualities.

There is no clear cut answer. My feeling, however, is that persons utilizing Knox Gelatine Drink will do so as a regular part of their diet to provide the essential components of a normal diet. Used as such, it would not be a supplement.

As gelatine, it is exempt. All beverages are exempt with certain specific exceptions not applicable. Accordingly, it is my conclusion that Knox Gelatine Drink should be removed from the taxable list and placed on the exempt list.

LAA:ph [lb]

STATE BOARD OF EQUALIZATION

March 24, 1970

Dear Mr. [X]:

This is in response to your letter of March 9 asking whether Knox Gelatine Drink was an exempt food product.

While the question is a close one, it is my conclusion that amendments to the code effective January 1, 1970 require that the product be classified as exempt beginning on that date.

Prior to January 1, 1970 it had been ruled a taxable food supplement, and it should be considered taxable for all periods prior to that date.

Very truly yours,

Lawrence A. Augusta
Tax Counsel

LAA:ph [lb]