

**STATE BOARD OF EQUALIZATION**

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May 8, 1991

Mr. [C]
Attorney at Law
XX --- ---
--- ---, California XXXXX

RE: Malt Extract
S- -- XX-XXXXXX

Dear Mr. [C]:

Your letter of March 25, 1991, to the Legal Division has been assigned to me for a response. You are requesting an opinion regarding the applicability of sales and use tax to sales of Dry and Liquid Malt Extract.

Attached to your letter are copies of several pieces of correspondence you have had with various members of the Board staff, particularly a letter dated January 31, 1991, which you sent to Ms. Jean A. McNeill, Return Review. That letter indicates that you represent the [H] and that you are specifically interested in the case of Mr. [Name]. Unfortunately, we are prohibited from supplying you with a copy of the legal opinions underlying Ms. McNeill's letter of [date], to Mr. [Name]. (Rev. & Tax. Code § 7056(a).)

OPINION

We have recently thoroughly reviewed the regulation as well as previous rulings and opinions on this matter. We have, we regret to say, determined that there is some confusion in the authorities regarding Malt Extract.

Regulation 1602(a)(1) lists malt extract as a food product. Regulation 1602(c) provides that an item which is included in the term "food products" remains a food product, even if it is purchased to be incorporated into an item which is defined as not being a food product. (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.)

Previously, the Board staff had adopted an interpretation of Ruling 52(c), the predecessor to Regulation 1602(c), containing identical language, that items sold by retailers other than food retailers for non-food purposes were not covered by that exemption. (II Bus. Tax. L. Guide, Annot. 245.0780; Annotations are excerpts from previous Board staff opinion letters and serve as a guide to staff positions.) After review, we have determined that that interpretation is too narrow. We are of the belief that the nature of the retailer is not the standard and that "non-food purposes" means "not for human consumption." Therefore, we conclude that Dry and Liquid malt Extracts are food products even when sold by retailers of beer-making supplies for the purpose of making beer or other carbonated and/or alcoholic malt beverages. We are currently in the process of revising the applicable authorities.

I have already contacted Ms. McNeill to correct the previous opinion. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

cc: Mr. O. A. McCarty, Supervisor, Return Review