State of California

Board of Equalization
Legal Division-MIC: 82

M e m o r a n d u m

245.0726

To : Mr. J.W. Cornelius (MIC:40)
Supv., Aud. Eval. & Plan. Sec.

Date: February 25, 1997

From : John L. Waid
Senior Tax Counsel

Telephone: (916) 324-3828
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Subject: [No Permit Number]
N--- S--- Products
Medicinal Herbs

I have reviewed the October 29, 1996, draft of your opinion which you propose to send to Mr. Jack A, Infranca, District Principal Auditor of the Van Nuys District, regarding sales by this taxpayer. In it, you indicate that the medicinal claims which will prevent a product from qualifying as a food product under Regulation 1602(a)(4) may be found in materials, such as the product catalogue, other than those included on the label or in the packaging.

You are quite right when you call to Mr. Infranca's attention that this subdivision does not have the requirement that the disqualifying information be found on the label which is found in Regulation 1602(a)(5) with respect to food supplements. We have, however, previously determined that the search for disqualifying information for the application of subdivision (a)(4) should be limited to the label or other packaging supplied to the customer The Board approved this practice at the Business Taxes Committee meeting on August 20, 1996.

In this case, the medicinal claims for these particular N--- S--- products are found in the retailer's catalogue rather than on the label. These catalogues are usually supplied to customers in the package in which the company mails the products. If the catalogue at issue is supplied to customers as part of the package, then the information thereon can be taken into account to determine if these products, though ostensibly foods, are in fact sold as medicines. The last paragraph of the draft must be rewritten accordingly.

JLW:sr