

245.0000 FOOD PRODUCTS—Regulation 1602

See also Taxable Sales of Food Products; Vending Machine Operators; Reporting Methods for Grocers.

(a) IN GENERAL

[245.0020](#) **Albumin** sold by a drug company to a hospital to be used as a culture medium to grow bacteria and other microscopic organisms for research is not an exempt food product for human consumption. 4/24/62.

[245.0028](#) **Aloe Berry Nectar.** Aloe Berry Nectar's label states that this product is "100% Stabilized Aloe Vera with Natural Cranberry and Apple Concentrate", and makes no weight-loss claims for it. This is a food product, the sale of which is not subject to tax. 6/17/91.

[245.0035](#) **Asian Specialty Foods.** For the period July 15, 1991 to November 30, 1992, candy, confectionery and snack foods were excluded from the definition of food products and subject to sales and use tax. The following is a classification of various Asian specialty foods within the meaning of section 6359 of the Revenue and Taxation Code and Sales and Use Tax Regulation 1602:

Mochi is a "snack cake" which is a "snack food". This product is a sponge-cake base which is folded up around a sweet bean paste interior and then steamed. It is also sold in individual pre-wrapped servings.

Yokan is a candy. This product is made by steaming beans into a gelatinous mass, which is sweetened by the addition of sugar. It is used as a dessert or served with tea.

Manju and Monaka are "snack cakes" which are "snack foods". These products are rice flour dough formed around a sweet bean paste center and steamed or baked in individual portions. They are used as desserts and tea cakes. The fact that some forms of manju are stored in the freezer does not affect the overall classification. 6/3/92.

[245.0037](#) **Aspartame.** Aspartame is the chemical compound which composes such sugar substitutes as "Nutrasweet" and "Equal." Sugar substitutes consisting of Aspartame qualify as "food products." 5/31/91.

[245.0060](#) **Baby Formulas.** Baby formulas sold in bottles with attached nipples, collars and discs, constitute sales of exempt food products in nonreturnable containers. Gross receipts from such sales are not taxable. 12/9/63.

[245.0080](#) **Baby Formulas in Disposable Formula Bottles.** The sale of baby formulas in disposable formula bottles containing pre-sterilized disposable nipple units is an exempt sale. 3/29/65.

[245.0085](#) **Barley Essence Barley Powder.** Barley Essence Barley Powder is described as “nature’s concentrated whole food, containing vitamins, minerals, amino acids, active enzymes, and chlorophyll for complete balanced nutrition.” This is a powdered health food made from brown rice and the dried juice of the barley plant. This product is not described as a food or dietary supplement or adjunct nor does it make any weight loss claims. This product qualifies as a vegetable juice product, the sale of which is exempt from tax. 6/5/91.

[245.0089](#) **Beer Ingredients.** The sale of yeast and Irish moss to customers who will brew their own beer qualify as sales of food products if the yeast is not sold as a dietary supplement and the Irish moss is not sold for medical or another nonedible purpose. The fact that the finished product, home brewed beer, results in a product that is not considered a food product for sales tax purposes does not alter the fact that these ingredients, in their packaged form as sold, constitute food products sold for human consumption. 8/10/95.

[245.0140](#) **Sodium Bisulfite.** Sodium Bisulfite used on potatoes to preserve their whiteness is not a food product, and its sale to consumers, for example, by grocery stores, is subject to tax. However, where it is purchased by restaurants for fixing peeled potatoes so as to retard discoloration, it may properly be purchased ex-tax for resale since the compound becomes incorporated into the potatoes. 12/20/60. (Am. 2000–1).

[245.0150](#) **Brewing Aid.** “Spring Water Mineral Brew Golden Cup Coffee Saver”, a brewing aid, does not qualify as a food product under section 6359 of the Revenue and Taxation Code. It is not a coffee extender or blend or any other coffee substitute. It is, rather, a brewing aid whose primary function is to extract all the flavor without adding any other flavors. It is mixed with grounds prior to brewing so that only half of the normal amount of coffee is used to brew a full pot. Most of the Coffee Saver stays in the grounds and is thrown away with them. 6/6/91.

[245.0190](#) **Cake Decoration—Silver Balls.** Candy-coated cake decorations called “silver balls” are edible and qualify as “food products” within section 6359. Sales of “silver balls” for human consumption are nontaxable. 6/9/82.

[245.0205](#) **Calcium Propionate and Epodium Propionate.** Neither calcium propionate nor sodium propionate are food products, although they do become a component part of bread which is a food product. The food product exemption is based on the nature of the property at the time it is sold. Accordingly, while sales of these products to bakeries which resell the bread are exempt as sales for resale, sales to customers such as a governmental agency which bakes bread for its own use are subject to tax. 5/24/55.

[245.0280](#) **Carbonated Beverage Resembling Champagne.** A nonalcoholic carbonated beverage prepared and sold to resemble champagne is not a food product within the meaning of section 6359. 6/22/65.

[245.0285](#) **Carbonated Fruit Juices.** Carbonated products which are considered 100% natural fruit juices qualify as exempt “food products”. If the carbonated product includes a preservative, such as sodium benzoate, or any other additive, it will not be considered a natural fruit juice and tax will apply to its sale. 3/5/87.

[245.0287](#) **Carbonated Fruit Juices—Other Additives.** Under Sales and Use Tax Annotation 245.0285 (3/5/87), carbonated fruit juices are considered “food products” if they contain 100% natural fruit juice. However the annotation points out that if the carbonated product includes a preservative, such as sodium benzoate, or any other additive, it will not be considered a natural fruit juice and tax will apply to its sale.

An exception to that statement occurs when a substance that naturally occurs in fruit juices is added to the juice. For example, the addition of citric acid and/or ascorbic acid (Vitamin C) to carbonated 100% fruit juices in which Vitamin C already occurs will not cause the juice to be excluded from food products under Regulation 1602(a)(2). 10/28/03. (2004–2).

[245.0290](#) **Chemicals Used in Experimental Diet.** Mixtures of amino acids, vitamins and minerals are combined with fruit-flavored liquids and used as an experimental diet for human beings. Inasmuch as these combinations are basic elements of normal food for human consumption and are intended to be substituted therefor, they qualify as food products under section 6359 7/21/67.

[245.0315](#) **Combination Package—Flower Pot Bread Baking Kits.** These “Baking Kits” are composed of a six-inch clay pot with a package of bread mix inside the pot. The clay pots are covered with decorative wrapping and imprinted paper. The clay pot represents 20 percent of the total cost of the product.

Since the cost of the clay pot represents 20 percent of the total cost of the baking kit, it is expected that the retail value of the clay pot represents more than 10 percent of the retail value of the baking kit, exclusive of the container. Therefore, a segregation must be made and the sales tax is measured by the retail sales price of the clay pot. (Regulation 1602(b).) 11/14/95.

[245.0320](#) **Communion Wafers.** Communion wafers are food items the sale of which is exempt. 8/5/66.

[245.0330](#) **Cooking Wine.** Cooking wine, which is rendered unfit for beverage use within the meaning of section 5362 of the Internal Revenue Code and therefore may be used only for cooking, qualifies as a food product. 9/21/94.

[245.0340](#) **Curing Salt.** Curing salt sold to butchers for curing meat is permanently incorporated into the meat and such sales are exempt both as sales of a food product and as sales for resale. In the curing process, it is assumed that a fairly large amount of the curing salt does not become permanently incorporated into the meat but is lost or discarded. Nevertheless, this is not important. The critical factor is whether this product is

purchased for the purpose of being incorporated into the meat. If this is the purpose, it is not significant that the process used entails a large amount of waste. 10/6/55.

[245.0370](#) **Distilled Water.** When the label on a bottle of distilled water does not include a reference to intended use or indicates the water is only for non-food purposes, the distilled water should not be regarded as sold for human consumption and its sale is thus subject to tax.

When the label indicates that the distilled water is for drinking only or includes references to both food and non-food uses, the sale of that bottle of distilled water qualifies for exemption from tax under section 6359. 12/01/00. (2001–3).

[245.0380](#) **Drug Stores,** selling food products, cannot adopt percentage of purchases method of computing tax. 11/8/50.

[245.0390](#) **Edible Flowers.** Sales of edible flowers are taxable sales. Flowers are ordinarily used in gardens or for decoration and not as food for human consumption. Section 6359(b) specifically provides that food products include “vegetables and vegetable products” and “fruits and fruit products” but does not list edible flowers as a food product. The fact that an item is edible does not by itself make the item a food product. 2/6/91.

[245.0395](#) **Essential Oils.** These are products such as oil of clove, oil of fir, oil of lemon, etc. These oils are sold in one ounce bottles with no dropper. The labels contain no statement as to use. It is understood that “essential oils” sold in one ounce bottles are generally used as scents and not meant to be ingested. As such, the essential oils are not food products and their sales are subject to tax. 8/23/89.

[245.0400](#) **Fish Bait.** Sales of mudsuckers used as bait are subject to sales tax since bait is not an exempt food product. 8/24/64.

[245.0420](#) **Fish Bait—Nonliving.** Although sales of sardines for human consumption are exempt, sales of “nonliving” fish or animal products for use **strictly** as fish bait and not intended for human consumption do not fall within section 6358(a) and hence are subject to sales tax. (For treatment of live fish bait refer to Annotation 110.0150.) 6/15/60.

[245.0450](#) **Flavored Mineral Waters.** Flavored, noncarbonated mineral waters which make no medicinal claims are exempt food products. 1/27/95.

[245.0460](#) **Low-Alcohol Wine.** Although it contains only .49% alcohol by volume, St. Regis Vineyard’s Wine Without Alcohol is nevertheless a “. . . spirituous, malt or vinous liquor,” specifically excluded from the term “food products” by Regulation 1602(a)(2). 7/31/86.

[245.0480](#) **Gatorade.** Gatorade, a noncarbonated soft drink, is an exempt food product on and after January 1, 1970, pursuant to section 6359 as amended 9/19/69.

[245.0485](#) **Goetz Pale “Near Beer.”** The product label indicates that the product is “nontaxable under section 5051 I.R.C.” and that the product is brewed with grain, malt, hops, yeast and water.

The statement “nontaxable under section 5051 I.R.C” merely indicates that Goetz Pale “Near Beer” is not federally taxed as an alcoholic beverage. According to the Department of Alcoholic Beverage Control (ABC), this product is not registered in California as an alcoholic beverage. The alcohol content of the product is below that necessary to be legally defined as an alcoholic beverage for ABC purposes.

However, from the ingredients and name, the product does contain some alcohol and that it is naturally carbonated. Even though the alcohol content is below that required under ABC rules for an alcoholic beverage, this product is a spirituous, malt liquor to the same extent as hard apple cider which is not exempt as a spirituous liquor. Additionally, it is assumed that this product is carbonated and thus taxable. 4/29/75.

[245.0492](#) **Hains Linseed Oil.** Linseed oil is extracted from flaxseed and may also be referred to as flaxseed oil. Hains linseed oil is an edible oil from vegetable origin which, when sold for human consumption, qualifies as a food product. It follows that the sale of Hains linseed oil is not taxable. 8/25/88.

[245.0495](#) **Herbal Chew.** An herbal chew that is not made of gum is not a food product or chewing gum even though it contains no tobacco. Accordingly, its sales are subject to tax. 10/19/94.

[245.0496](#) **Herbal Extracts.** These are plant extracts that have been cold-processed in a mixture of alcohol and water. They are sold in a one-ounce bottle with a dropper. The label states “for use as a beverage.”

The herbal extracts as described are exempt food products provided that they are sold as a beverage and the label or packaging makes no claim to the product’s dietary benefits. 8/23/89.

[245.0498](#) **Herb Capsules.** Nature’s Sunshine Herb products are sold in capsule form. They are an herbal food combination containing such items as kelp plant, dandelion root and alfalfa herb.

Since the label does not state that the product is to be used as a dietary supplement or adjunct, these products qualify as food products the sale of which is exempt from tax. 2/5/92.

[245.0499](#) **Herbal/Food Combination.** Under California law, no particular claims for nutritive value are required for an item to be considered a food for human consumption. Herbal products, the labels of which do not designate the product as a food supplement or

adjunct, are food products. Thus, the sale of such products is exempt from sales and use taxes. 1/31/94.

[245.0520](#) **Horse Meat Products.** Horse meat and horse meat products are ordinarily not regarded as food products for human consumption, being primarily purchased as food for animal consumption.

In order to be exempt, sales of such products must be supported by evidence that the property was in fact purchased for human consumption.

The fact that such products are inspected and suitable for human consumption is not sufficient proof for exemption. They must actually be used for human consumption. 11/25/53.

[245.0580](#) **“Icee.”** “Icee” is a carbonated beverage, in a slightly different form for serving, and is subject to tax. While the CO₂ contributes to the freezing process, it is also an essential part of the beverage itself. 3/24/70.

[245.0590](#) **Ice Sold to Street Food Vendors.** A taxpayer rents hot dog carts to independent street vendors and also sells them ice without taking any resale certificates. The street vendors use some of the ice to keep their food products cool or fresh and some of the ice is resold in or with soft drinks. In lieu of clear evidence otherwise, the Board will regard 50 percent of the sales of the ice to be nontaxable sales for resale with the soft drinks and 50 percent as taxable sales of ice used in the vendor’s business. The exemption provided by section 6359.7 does not apply to these taxable sales since that exemption applies only with respect to ice used in packing and shipping food products for human consumption by a carrier and not the use of the ice by street vendors. 6/19/95.

[245.0620](#) **Imitation Lime and Lemon Juices.** Imitation lime and lemon juices are exempt. 5/13/64.

[245.0640](#) **Knox Gelatin Drink.** Knox Gelatine Drink is an exempt food product, effective January 1, 1970. 3/24/70.

[245.0652](#) **Liqueur-Filled Candy.** While chocolates filled with liqueurs meet the definition of candy and confectionery pursuant to Sales and Use Tax Law section 6359, they do not necessarily qualify for exemption as “food products.” When these chocolates are sold with a label stating the sale to a person under age 21 is unlawful because the product contains sufficient amounts of alcohol, the products are taxable. “Spirituous, malt and vinous liquors” are specifically excluded from the term “food products.” 1/5/90.

[245.0660](#) **Liquid or Dry Tea.** Liquid or dry tea in half-pint containers with minimal additives is tax exempt. 8/25/67.

[245.0680](#) **“Liquid Smoke.”** Liquid smoke is considered to be sold for resale to a restaurant or other customer who applies the liquid smoke as an ingredient of barbecued meats which are to be sold. The theory is that the smoke or certain ingredients contained in it become physically incorporated into the food providing flavor to it. 8/24/64. (Am. 2005–2).

[245.0698](#) **Malt Extracts.** 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 other alcoholic malt beverages. 5/8/91.

[245.0700](#) **Malt Syrup.** Malt syrup, often sold as a substitute for molasses for the purposes of being an ingredient of, or upon, food products would be exempt. 6/22/53 (revised 1/1/70).

[245.0710](#) **Manufacturer’s Coupons Redeemed with Food Stamps and Cash.** When a retailer receives cash, manufacturer’s coupons, and food stamps for a taxable sale, the amounts paid in cash as well as the amounts paid in manufacturer’s coupons are subject to sales tax. USDA regulations are consistent with this application of tax.

When a person purchases mixed merchandise, some generally taxable and some exempt, and pays for it with food stamps and cash, the amount of the food stamps must be applied first to merchandise normally subject to sales tax. 11/1/91; 11/12/91.

[245.0724](#) **Medicinal Claims.** The Sales and Use Tax Law provides an exemption from sales and use taxes for sales of food products for human consumption under certain circumstances. “Food products” do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplement or adjuncts. A product is either a food, medicine, or a supplement or adjunct; these classifications are mutually exclusive. For purposes of this exemption, “medicine” has the same meaning as defined in Regulation 1591. A product that does not meet the definition of a medicine in Regulation 1591 is not a medicine for purposes of this exemption Regulation 1602. A product cannot be classified as a medicine solely on the basis of medicinal claims on the product’s label or in its brochures.

Except where taxable for all uses as provided in subdivision (c) of Regulation 1591, when determining if a product is a medicine, it must first be determined if the product is approved for use by the U.S. Food and Drug Administration to diagnose, cure, mitigate, treat or prevent any disease, illness or medical condition. If a product is so approved, it is a medicine under Regulation 1591, subdivision (a)(9)(A) and is not a food product.

To determine whether a product qualifies as a medicine under Regulation 1591, subdivision (a)(9)(B), we look to whether it is “commonly recognized” as a substance or preparation for use in the mitigation, treatment, or prevention of disease. “Commonly recognized” as a medicine means general acceptance indicated by either: (1) the greater weight of opinion in the medical community, as reflected, for example, by refereed medical journals or similarly authoritative scientific publications or pronouncements

from authoritative regulatory institutions; or (2) constitutional, statutory, or controlling case law authorities establishing that the substance or preparation in question is a medicine as a matter of law. (11/17/08).

[245.0740](#) **Monoglycerides.** The sale of monoglycerides for use as an ingredient or component part of a manufactured food product is exempt as a sale for resale purposes. 8/31/55.

[245.0760](#) **Mono-Sodium-Glutamate.** Mono-Sodium-Glutamate is a taste intensifier added to food to enable the user to perceive the flavor to a greater degree than possible without it. In itself it has no flavor. It is marketed under several trade names, one of which is “Accent.”

Mono-Sodium-Glutamate is a food product for human consumption within the meaning of the Sales and Use Tax Law. Accordingly, sales of Mono-Sodium-Glutamate are exempt from sales tax. 5/14/52.

[245.0765](#) **Muesli, Pasta, Chili, and Soups.** These products are usually described as dehydrated cereal, pasta, stew, and soups. Although they probably contain a high proportion of powder, these items represent products traditionally accepted as foods. Therefore, despite the fact that these items are designed to decrease caloric intake, their sales are exempt from tax. 9/16/91.

[245.0770](#) **Mycoban.** Mycoban, a preservative added to bread to inhibit the formation of mold, is not a food product. Accordingly, sales of Mycoban are subject to sales tax. 5/14/52.

[245.0840](#) **Pan Oils.** Tax does not apply to sales of oils with a vegetable oil or lard base where these oils are ultimately consumed by humans as an ingredient of bread or other bakery products. These products fall within the definition of food products for human consumption set forth in section 6359 of the Sales and Use Tax Law and are ultimately consumed by humans as an ingredient of the bread or other bakery products. On the other hand, the tax applies with respect to the sale of mineral oil or oil with a mineral oil base used for greasing pans or as divider oil, even though it may find its way into the bakery products. The product is not within the definition of food products for human consumption and is definitely purchased for some reason other than resale.

Mixtures containing beeswax, mineral oil, or other ingredients not within the definition of food products cannot be regarded as food products for human consumption for purposes of the sales tax. Therefore, the sale of these mixtures for use as pan grease, divider oil, and the like, are taxable retail sales. 3/24/52.

[245.0860](#) **Pan Oils.** If a pan oil is essentially an edible oil of animal or vegetable origin, it is considered exempt. If, however, the oil has a substantial amount of mineral oil or other ingredient not within the definition of “food products,” the sale thereof is subject to tax. 5/14/53.

[245.0900](#) **Petroleum and Mineral Oil.** Tax applies to sale to bakeries for use in lubricating dough cutters and troughs, although a portion of such lubricants is picked up by and becomes an ingredient of the bakery products. 6/23/50.

[245.0920](#) **Peanuts,** dried salmon, pretzels and beef jerky are considered exempt food products. If, however, retailer provides any facilities for the consumption of such products their sale would be taxable. (For the period July 15, 1991 to November 30, 1992, pretzels were classified as taxable snack foods which were excluded from the definition of exempt food products.) 3/11/54.

[245.0940](#) **Hypo-Allergenic Baby Formula.** ProSobee, an infant formula made from soybeans containing no vegetable galactogens and Isomil, a milk-free, soy, infant formula, are exempt food products under section 6359 of the Revenue and Taxation Code. 12/14/65.

[245.0980](#) **Salted Wine.** Salted wine sold for use in cooking, is “rendered unfit for beverage use” under section 5362(d) of the Internal Revenue Code and is not “fit for beverage purposes” under section 23004 of the Business and Professions Code. It is, therefore, not a “vinous liquor” under section 6359 of the Revenue and Taxation Code and, accordingly, qualifies as an exempt food product. 2/8/68.

[245.1000](#) **Salt** sold for use in preserving or processing food products but not becoming part thereof is not exempt as a food product. 4/4/50.

[245.1020](#) **Semifrozen Beverage Products.** Semifrozen beverage products marketed variously as “frozen slush,” “fruit slush,” “Slurpee,” “Blizzard,” etc., are subject to tax if they are carbonated and are exempt if noncarbonated. They are not snow-cones. 3/12/70.

[245.1030](#) **Shaklee Products—Exempt.** Shaklee Slim Plan Drink Mix, Shaklee Meal Shakes and Shaklee Performance Drink Mix qualify as exempt food products under section 6359. 11/27/91.

[245.1040](#) **Sherbet.** In order to label a item as sherbet a manufacturer must incorporate in it milk or milk products and as such it is exempt. 5/9/61.

[245.1060](#) **Soyamel.** Soyamel, as an independent food item, used as part of a regular diet or as a substitute for dairy milk for health reasons, qualifies as an exempt food product. 4/14/69.

[245.1063](#) **Soy Drinks.** The following three soy based drinks—Vitasoy Vanilla Delite Natural Soy Drink, SoyMoo Non-Dairy Soy Drink, and Edensoy Natural Soy Beverage—qualify as food products the sales of which are exempt from tax. 1/31/92.

[245.1066](#) **Sports Drinks.** Noncarbonated sports drinks such as Gatorade, Powerburst, Exceed, etc., qualify as food products the sales of which are exempt from tax under Regulation 1602(a)(1). 2/26/97.

[245.1067](#) **Sports Energy Drinks.** Sales of sports energy drinks, as a product category, are nontaxable without regard to wording such as “carbohydrate” or “energy,” which may appear on their label. The products are little more than sugar and water and not supplemental or adjunct items to remedy gross dietary deficiencies or gross mineral depletion. These products are marketed as responsive to transitory nutritional depletion resulting from strenuous exercise. These products are nothing more than beverages. A sale of a product from this entire product category is nontaxable as a food product, without regard to insubstantial difference between products. 5/29/96.

[245.1075](#) **Stretch Island Fruit Leather.** Stretch Island Fruit Leather is a compressed, dried natural fruit product consisting of fruit, fruit juices, and spices. It does not contain sugar, preservatives, artificial flavors or colors. It is not a “snack food,” it is a nontaxable food product. 9/6/91.

[245.1080](#) **Survival Kits.** Where such kits contain food products as well as other items that are taxable and the kit is sold for a lump sum, an allocation between the taxable and non-taxable items must be made. 11/31/61.

[245.1093](#) **Thickened Juices.** These products are described as specially formulated to assist health care operators with the dietary management of residents with dysphagia. The smooth consistency ensures a safe swallow. These products also come in pre-packaged containers that do not require refrigeration until opened for serving. They come in 46-ounce bulk packages and 4-ounce individual sealed cups. The pictures of the products indicate that they contain 100 percent fruit juice, and the flyers state that the juices provide 100 percent of the minimum daily RDA of Vitamin C.

Though the products are given to persons with a medical problem, they are given to deal with the patients’ nutritional needs. Foods and medicines are mutually exclusive categories with different requirements for exemption from tax. (Regulation 1602(a)(4).) For that reason, we apply the rules regarding the taxation of food products rather than the sales of medicines to the sales of these products. Thus, under the criteria set forth in Regulation 1602(a)(2) and (a)(5), the thickened juices and beverages qualify as food products, the sale of which is not subject to tax. 1/21/05. (2006–1).

[245.1095](#) **Toppkrisp Nutritional High Fiber Meal Replacement.** From the brochure’s reference to convenience and the fact that Toppkrisp Nutritional High Fiber Meal Replacement apparently does not need to be mixed with anything, it is assumed the product is similar to a wafer, cracker, or cookie. This product qualifies as a “food product” the sales of which are exempt from tax since it is not sold in a form described in section 6359 (c).

(Note: During the period July 15, 1991 to November 30, 1992, the product was subject to tax as a snack food). 5/9/91.

[245.1098](#) **Waxpacks—Gum and Cards.** Waxpacks are combination packages generally consisting of one stick of gum and various quantities of baseball cards. Sales of waxpacks are taxable. 9/26/89.

[245.1100](#) **Wine Flavoring Extract.** “Wine Chef,” an alcohol-free instant wine flavoring added to food after cooking is a flavoring extract and an exempt food product. 10/21/69.

[245.1101](#) **Yeast Granulars.** Tax does not apply to the sale of viable yeast which is sold as a food for human consumption in the production of bread and malted alcoholic beverages such as beer, mead, and ale. Tax applies to the sale of fermentive yeast used in the manufacture of wine because the yeast is used in the manufacture of the wine, not incorporation. This is distinguished from the yeast used in beer and bread which is incorporated and consumed by humans, while the yeast for wine is not incorporated and, thus, not consumed by humans. 11/23/83.

(b) DIETARY SUPPLEMENTS AND ADJUNCTS

[245.1105](#) **Absorbent-C.** Absorbent-C are vitamin tablets which are excluded from the term “food products.” Sales of this product are subject to tax. 6/17/91.

[245.1110](#) **Advanced Formula Fat Burners, Fat Burners.** These are tablets and capsules designed to help develop lean muscle tissue while losing unwanted and harmful body fat. These products are dietary supplements, the sales of which are taxable. 12/20/93.

[245.1119](#) **Aloe Vera Gel.** Aloe vera gel consists of 99.55% aloe vera, .25% Irish Moss, and .20% sorbic acid (a food preservative). It is not labeled as a dietary supplement and is consumed as a beverage. Under these conditions it qualifies as an exempt food product under Regulation 1602. 8/21/89.

[245.1120](#) **Aloe Vera Gel.** Aloe Vera Gel, if sold for use as a dietary supplement, does not qualify as a food product under section 6359. 7/19/67; 2/11/91.

[245.1121](#) **Amino Acids Pure Muscle Building Formuto, Amino 1000.** This product is in capsule form and described as a “nutritional supplement” designed to provide amino acids in order to maintain a proper level of protein for heavy exercise. The sales of this product are taxable. 12/20/93.

[245.1122](#) **ANABAENA Flos Aqua** is a freeze dried product consisting of pure premium blue-green algae. It is labeled as a pure food product and contains naturally chelated vitamins, minerals, lipids, nucleic acids, chlorophyll, amino acids, and enzymes. Regulation 1602 provides that “. . . unusual foods such as brewer’s yeast, wheat germ,

and seaweed are not subject to tax unless their label states they are a food supplement or the equivalent.” As such, ANABAENA Flos Aqua is a food product unless it is labeled as a food supplement. 11/16/81.

[245.1124](#) **Avacare Complete.** This product does not qualify as an exempt food product because it is sold in powdered or granular form, is sold as a dietary supplement as part of a weight loss regimen, and does not contain all the nutritional elements or quantities required of a complete dietary food as required by Regulation 1602. 1/17/84.

[245.1125.750](#) **Boost Nutritional Drinks.** Boost and Boost Plus are labeled as nutritional energy drinks. Boost appears to be marketed as a product designed to increase generally a person’s intake of protein, vitamins and/or calories. It does not appear to be promoted as a product for use as a person’s sole source of nutrition. Therefore, under Regulation 1602(a)(5), it is not a food product for purposes of the section 6359 exemption (the calories and protein amounts it provides are also insufficient for it to constitute a complete dietary food for purposes of the exemption). The Boost Plus labels and web site literature state that its purpose is to help gain or maintain weight. A daily serving gives more than enough calories but not enough protein or vitamins and minerals to be considered a complete dietary food. These products are thus food supplements or adjuncts excluded from the definition of “food products” by Revenue and Taxation Code section 6359(c). (Regulation 1602(a)(5).) Consequently, the sale of Boost and Boost Plus are subject to tax. 3/11/03. (2003–3).

[245.1127](#) **California Medical Diet Nutritional Weight Loss Plan.** The California Medical Diet Nutritional Weight Loss Plan (CMD) is a nutritional preparation in powdered form to which water is added to make a liquid. Each serving of this product provides the user with 154 calories, 11 grams of protein, 14 grams carbohydrates, and 6 grams of fat. The maximum recommended dosage for this product (four servings per day) provides the user with a daily intake of 620 calories, 45 grams of protein, 156 grams of carbohydrates, and 24 grams of fat. The principal ingredients are milk desired proteins (Casein), fructose, and vegetable oils.

The CMD does not qualify as a food product because it is sold as a dietary supplement. The CMD is a product in powdered form and is described on its label as a diet food which is prescribed or designed to decrease the user’s calorie intake and encourage weight loss. Furthermore, this product does not provide the user with a sufficient amount of calories in the recommended daily dosage to qualify as a dietary food under Regulation 1602. Therefore, tax applies to the sale or use of this product. 2/27/84.

[245.1128](#) **Cambridge Diet.** Cambridge Diet is a dietary supplement or adjunct the sale of which is subject to sales tax. 3/17/83.

[245.1128.010](#) **Cambridge Diet and Nutrition Bar.** The Cambridge Diet and Nutrition Bar is described as “a delicious addition to the Cambridge Weight-Loss Program” and a “carefully balanced nutritional supplement for the Cambridge Nutrition Program.” The bar is carob coated, peanut flavored, and is sold in bar form. Each 11 gram bar provides

the user with 150 calories, 11 grams of protein, 17 grams carbohydrates, and 4 grams of fat. The user is advised of two patents, both of which are for inventions concerning dietary supplements and dietary methods for employing said supplements for the treatment of obesity. The company also states that the diet can be used as a nutritional supplement separate and apart from the weight loss program.

It is concluded that the “Cambridge Diet and Nutritional Bar” is sold as a dietary supplement. However, section 6359 specifically excludes from the term “food products” dietary supplements in liquid, powdered, granular, tablet, capsule, lozenge, and pill form. Since the Cambridge Diet and Nutrition Bar is not sold in any of these specified forms, it is outside the exclusion from the exemption from tax under section 6359 for “food products.” Therefore, tax does not apply to the sale or use of this product. 9/27/83.

[245.1129](#) **Capsules to be Taken before Meals.** Peak 2008, Nature’s 2000 and Biogin 2001 are food adjuncts. The fact that the brochure which describes the products contains a disclaimer regarding any claims of therapeutic value of the products does not alter the conclusion that these products are food adjuncts. They are sold in capsule form with directions to take “one-half hour before meals.” 11/16/94.

[245.1130](#) **Chlorella.** Chlorella is a taxable dietary supplement or adjunct. 3/10/71.

[245.1132](#) **Chocolate Chiffon Shake Mix.** The label describes this product as a “Nutritional Diet with Aloe and Fiber” and as a meal replacement. The shake, if used as the sole source of nutrition, provides a daily intake of only 270 calories and 33 grams of protein, considerably less than the standard for a “complete dietary food.” This product is a dietary supplement the sale of which is subject to tax. 6/17/91.

[245.1145](#) **Diet Octane.** This product is described as a “nutritional supplement powder” to help an athlete maintain weight or to help in ordinary weight loss, and thus, is classified as a taxable dietary supplement. 12/12/93.

[245.1153](#) **Dietary Supplementary Fibersonic.** Fibersonic is a powder to be blended with milk to give the liquid a “milk-shake” texture. It is designated as a dietary supplement and therefore is excluded from the definition of “food products” by Regulation 1602 (a)(5). Its sales are subject to tax. 3/11/91.

[245.1155](#) **Dietetic Cookies.** Retail sales of Estee Assorted Dietetic Cookies are not subject to sales tax. Such cookies are not dietary supplements since they are not “. . . preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form. . . .” (Section 6359.) (For the period July 15, 1991 to November 30, 1992, Dietetic Cookies were classified as taxable snack foods which were excluded from the definition of exempt food products.) 10/17/72.

[245.1180](#) **Diet Wafers and Capsules.** Wafers and capsules advertised as high in vitamin content and for use in eliminating hunger sensations normally encountered by persons on reducing diets are not exempt food products. 10/1/57.

[245.1200](#) **Dietary Tablets.** Dietary tablets containing dry milk solids, honey, soy beans, sugar and butterscotch flavoring which are used to reduce hunger sensations are classified as a taxable dietary supplement. 4/7/65.

[245.1201](#) **Dr. Hagiwara's Products.** *Dr. Hagiwara's* Green Magma, Wheat Germ Extract, Green Essence, and Beta Carrot do not qualify as food products and their sales are subject to tax. They are sold in powdered form and the labels or other product literature accompanying the package containing the products make supplement claims. 9/2/97. (M98-3).

[245.1203](#) **Edge Bars.** The product Edge Bar has been determined to be an exempt food product because it is not in one of the forms to which Regulation 1602(a)(5) applies nor is it described on its package or label as a food supplement, food object, dietary supplement or dietary object, nor designed to remedy specific dietary deficiencies. During the period July 15, 1991 through November 30, 1992 Edge Bars were considered to be "fabricated snacks" and sales of them were taxable. 12/14/92.

[245.1204](#) **Encapsulated Bee Pollen.** Encapsulated bee pollen may be classified as a food product in the "unusual food" category (Regulation 1602(a)(5)) unless the label states that it is a food supplement or equivalent. Phrases such as "natural food supplement" and ". . . as an addition to the everyday diet" on the label would prevent the product from being an exempt food product. 1/8/86.

[245.1205](#) **Energy Bars.** (Shaklee) Food bars are listed as food products in Regulation 1602(a)(1) because the Energy Bar is not one of the forms of food products to which the conditions of Regulation 1602(a)(5) apply. Its sales are exempt from tax. (For the period July 15, 1991 to November 30, 1992, snack foods were excluded from definition of exempt food products. There was insufficient information available to determine whether the Energy Bar was a snack food). 11/26/90.

[245.1205.5](#) **Fiber Bars.** Fiber bars are not taxable dietary supplements since they are not preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form. (Regulation 1602(a)(5).) Fiber bars are food bars, comparable to candy, which is one of the products defined as "food products" by Regulation 1602 (a)(1), the sales of which are exempt from tax. 3/11/91.

[245.1206](#) **Gold's Nutritionalysis 100% Pure Milk/Egg Protein Powder.** This is a powdered drink mix described as "an excellent protein drink supplement." Since it is sold as a diet supplement, it is subject to the tax. 10/29/91.

[245.1207](#) **Gold's Nutritionalysis Weight Loss Powder.** This is a powdered drink mix formulated to help promote natural weight loss. Since it only supplies 300 calories and 72 grams of protein per day, its sales are subject to tax. 10/29/91.

[245.1208](#) **Gold's Nutritionals High Performance Weight Gainer Formula.** This is a powdered drink mix which is described as a "concentrated drink mix specially formulated to help maximize weight gain and overall strength." It supplies 970 calories and 36 grams of protein per day.

This product does not qualify as an exempt food product under Regulation 1602(a)(5) and, therefore, tax applies to its sale. 10/29/91.

[245.1210](#) **Hoffman's Hi-Proteen.** Hoffman's Hi-Proteen is a taxable food supplement or adjunct. 11/19/71.

[245.1212](#) **Ideal Snacks.** Although made from milk and vegetable sources, this product does not qualify as an exempt food product because its packaging and the enclosed literature clearly describe and laud it as a weight control, calorie reducing meal substitute, and it is sold in tablet form. 12/22/83.

[245.1215](#) **Juice Plus+.** This product provides natural fruit powders, fruit fibers, and food enzymes, along with food actives and acidophilus. Although Juice Plus+ is in capsule form, the label does not state that it is either a food or dietary supplement or adjunct. It also does not indicate that the purpose of the product is to increase, decrease, or maintain the intake of vitamins, minerals, proteins, or calories. The supplier states ". . . being sold as a real food, not a food supplement, vitamin or diet product." Therefore, it is considered a food product, the sale of which is exempt from tax under Regulation 1602(a)(1). 12/16/93.

[245.1216](#) **Juice Plus + Thins.** Juice Plus + Thins is sold in tablet form and is described as a food supplement. Therefore, it does not meet the definition of a "food product" under Regulation 1602(a)(5) and its sales are subject to tax. 11/18/96.

[245.1221](#) **Lactaid.** According to the manufacturer's brochure, lactaid is a "natural yeast-derived enzyme which is added to milk to convert its lactose into easily digestible sugars." Lactaid, which comes in liquid and tablet forms, is recommended for people who "have trouble digesting the lactose into milk." It is clear from this description that Lactaid is sold as a dietary supplement or adjunct and is not a food product exempt from tax pursuant to Regulation 1602(a)(5). However, Lactaid brand ready-to-drink milk and cheeses qualify as food products and are exempt from sales tax. 12/1/89.

[245.1225](#) **Leppin.** This product is described as the "ideal quick energy source which promotes physical activity and mental alertness day or night." It has all the characteristics of a dietary adjunct. Accordingly, sales of this product are taxable. 4/2/91.

[245.1232](#) **Liquid Fat Burners.** This is a liquid product designed for weight loss. Thus, the sales of this product are taxable under Regulation 1602(a)(5). 12/20/93.

[245.1240](#) **MCT Oil.** MCT Oil produced by Mead Johnson & Company is a taxable dietary supplement. 5/16/69.

[245.1241](#) **Medifast and Pro-Call 100.** Medifast and Pro-Call 100 are food products. 9/8/89.

[245.1242](#) **Meritene.** Meritene, a powdered protein supplement, does not contain sufficient calories or protein, by itself, to be considered a complete dietary food. Therefore the sale of Meritene to consumers is subject to tax. 8/30/89.

[245.1243](#) **Metabolic Optimizer.** This is a powdered drink mix which is described as “a more potent and highly concentrates source of branched-chain amino acids . . . plus energizing carbohydrates and medium-chain triglycerides” along with vitamins, minerals, etc. It provides only 351 calories and 31 grams of protein per day.

Since it does not supply the required calories and protein per day, it does not qualify as a complete dietary food. Thus, the sales of this product are taxable. 10/29/91.

[245.1244](#) **Met-Rx Bar Product.** A food bar of this type qualifies as a food product under Regulation 1602 since it is not one of the seven forms (e.g., liquid, powder, etc..) which is excluded from qualification. 6/27/95.

[245.1244.025](#) **Met-Rx Powdered Drink Mix.** This product is sold in powdered form and is described as a food supplement on the label. Therefore, sales or use tax applies to sales of this product. 6/27/95.

[245.1245](#) **Micro Diet Products.** Uni-vite Micro Bar: This food bar is analogous to candy bars which are deemed to be exempt by Regulation 1602, and is therefore exempt.

Micro Muesli, Micro Pasta, Micro Chili, and Micro Soups: These products are in a form traditionally accepted as food products and are exempt even though they may contain a high proportion of powders and are designed to decrease caloric intake.

Micro Drinks: These products are not within the definition of “food products” and are therefor taxable. This is a powdered drink mix designed for weight loss or maintenance. Typically, they contain 66 grams of protein and 630 calories and so do not meet the requirements to be a complete dietary food.

Although medicines are not food products, we have previously concluded that, under the proper circumstances, food products may be prescription medicines. If a physician furnishes Micro Diet products as part of a supervised weight loss regime to treat other health problems of a patient, the sale to the patient would be exempt and the purchase by the physician from the product distributor would be exempt as being for resale in the regular course of business. 2/28/91.

[245.1246](#) **Mini Vitamin Tablets.** Mini Vitamin Tablets are described as a “High-Potency Multi-Mineral Formula”, a dietary supplement. This is a product, in tablet form, described as a dietary supplement. Its sales are subject to tax. 6/17/91.

[245.1253](#) **Neo-Life Products.** The following products distributed by Neo-Life Company are dietary supplements or adjuncts the sale of which is subject to tax.

Pro-Snax (tablet form)

Ease Hi-protein (powder form)

Super Ease Hi-protein Food (powder form)

Gloda Hi-protein Powder (powder form). 7/25/75.

[245.1263](#) **Optifast 70 and Optifast 800.** Optifast 70 and Optifast 800 are used as a total meal replacement in connection with a weight loss program. Patients participating in the weight loss program are medically supervised by a physician. Optifast products are available by prescription only and are not available to the general public.

Even though Optifast 70 and Optifast 800 do not qualify as “complete dietary foods” under Regulation 1602(a)(5), they do qualify as “medicines” under Regulation 1591(b)(1). Accordingly, because these products must be furnished to patient by physicians pursuant to a medically supervised program for treatment of obesity, they are nontaxable under Regulation 1591(a)(2). 3/16/92.

[245.1264](#) **Pathway Meal Replacement Shake.** Pathway Meal Replacement Shake is a product which is mixed with water to be consumed. The mixture is nutritionally balanced and high in fiber and is designated as a dietary supplement for the purpose of weight management. Therefore, it is excluded from the definition of “food products” by Regulation 1602 (a)(5), and its sales are subject to tax. 3/11/91.

[245.1268](#) **Pollen, Royal Jelly and Forever Bee Propolis.** Where bee pollen products are sold in tablet form, they are, if sold as food supplements or weight-loss aids, excluded from the term “food products” and their sales are subject to tax. 6/17/91.

[245.1268.300](#) **Power Bar.** Power Bar is a candy bar or cookie fortified with vitamins and minerals. As such, it is a tax exempt food product under Regulation 1602. 5/30/90.

[245.1269](#) **Probioplex.** Probioplex is a powdered product described as a dietary supplement. Sales of this product are subject to tax. 6/5/91.

[245.1270](#) **Pro-Life Protein Formula 96.** Tax applies to the sale of Pro-Life Protein Formula 96, because it is sold as a protein dietary supplement rather than an exempt “food product.” 12/7/77.

[245.1280](#) **Protesoy** is a dietary supplement or adjunct, not exempt food product, and sales of it are subject to tax. 4/14/69.

[245.1283](#) **Re-Vita Liqua Health.** Re-Vita Liqua Health is a food or dietary supplement the sales of which are subject to tax. 8/4/92.

[245.1284](#) **Sea Fish Oil Capsules.** Sea Fish Oil Capsules label states that this product provides a rich source of Omega-3 fatty acid and olein acid and that supplementation with Arctic-Sea capsules is an excellent way to increase your polyunsaturated fat intake. Since this capsule product is labeled as a food supplement, its sales are subject to tax. 6/17/91.

[245.1285](#) **Shakes.** This is usually a powdered drink mix sold for the purpose of weight loss or maintenance. Such drinks are powdered products produced or designed to decrease caloric intake and are excluded from the definition of a “food product”. Their sales are subject to tax. 9/16/91.

[245.1286](#) **Shaklee Products—Taxable.** Shaklee Instant Protein Drink Mix is a taxable food supplement. 11/27/91.

[245.1287](#) **Shapelite.** Shapelite’s label designates this product as a source of high quality protein. It does not supply enough calories or protein to be a complete dietary food. Therefore, it is excluded from the definition of “food products” under Regulation 1602(a)(5), and its sales are subject to tax. 3/1/91.

[245.1288](#) **Slim Fast and Ultra Slim Fast Powdered Mix.** Slim Fast and Ultra Slim Fast Drink Mix sold in powdered form are taxable dietary supplements. Since the label states that the product is sold for the purpose of aiding weight loss these products are excluded from the definition of a food product pursuant to Regulation 1602(a)(5). 10/31/84; 12/31/90; 6/17/91.

[245.1290](#) **Slippery Elm Herbal Tea.** Slippery Elm Herbal Tea sold in capsule form does not qualify as an exempt food product. Food products do not include preparations in capsule form that are sold as dietary supplements or adjuncts. 9/27/76.

[245.1292](#) **Solid Mass.** This product is a powder which must be mixed with milk to be consumed. It is designed to aid in the intake of calories and to help the athlete gain weight and so it is a dietary supplement, the sales of which are subject to tax. 12/12/93.

[245.1293](#) **Somatogain.** The label identifies Somatogain, which is in powdered form, as a dietary supplement. The label further states each serving contains 156 calories and 0 grams of protein, and contains the statement: “Not a significant source of fat, cholesterol, dietary fiber, vitamin A, vitamin C, and iron.”

Based on the nutrition facts listed on the label, this product does not contain sufficient amounts of protein, calories, and other vitamins and minerals for it to be considered a

complete dietary food as that term is defined in Regulation 1602. Therefore, its sales are subject to tax. 07/01/96.

[245.1295](#) **Spirulina.** Spirulina, a type of seaweed, qualifies as a food product, provided it is not labeled as a food supplement or dietary adjunct, or make any claims concerning medicinal or dietary benefits. Like kelp, Spirulina labeled as a dietary supplement would not be considered a food product and its sale would be taxable. 6/1/89.

[245.1296](#) **Spirulina Plankton.** Spirulina Plankton is a dehydrated vegetable aquatic organism in powdered form. It is a food source containing up to 71 percent vegetable protein, vitamins, minerals, trace elements, and chlorophyll. Regulation 1602 provides that “. . . unusual foods such as brewer’s yeast, wheat germ, and seaweed are not subject to tax unless their label states they are a food supplement or the equivalent.” As such Spirulina Plankton is a food product unless the label indicates it is a food supplement. 4/27/81.

[245.1305](#) **“Stay Fit Nutri-Tabs” and “Stay Fit” Powdered Formula.** “Stay Fit Nutri-Tabs” consist of vitamin enriched “chewable tablets.” The suggested use of the tablets is as a supplement to or a replacement for the “Stay Fit Shake” and the label indicates the product can be used for a weight loss program. It also indicates that there are 60 calories and four grams of protein in each serving of six tablets.

“Stay Fit” Powdered Formula is to be mixed with nonfat milk or unsweetened juice to make a “shake” like drink which “contains the elements necessary for proper nutrition including vitamins, minerals, herbs and hipo-aids.” The label indicates that the product can be used in conjunction with other food products (fish, poultry, vegetables) for a weight loss program. It also indicates that there are 60 calories and 10 grams of protein in each serving.

Both “Stay Fit Nutri-Tabs” and “Stay Fit” powdered formula do not qualify as “food products” as that term is defined under Regulation 1602. Although the labels from these products do not specifically state that the products are food supplements or adjuncts, the labels nevertheless do indicate that these products are designed to encourage weight loss in the user by decreasing the caloric intake. (Regulation 1602(a)(5)(B).)

Furthermore, both “Stay Fit Nutri-Tabs” and “Stay Fit” powdered formula do not provide the user with a sufficient amount of calories and protein in the recommended daily dosage to qualify as nontaxable “complete dietary food” under Regulation 1602. Tax applies to the sale or use of “Stay Fit Nutri-Tabs” and “Stay Fit” powdered formula since these products are sold in powdered and tablet form as dietary supplements or adjuncts and are not therefore “food products” exempt from tax under Regulation 1602. 3/7/86.

[245.1328](#) **Taxable Supplements.** The following products are subject to tax when sold at retail.

Wow

Focus

Be Your Best!

Go For It!

2/3/94.

[245.1355](#) **ToppFast Diet Plan Meal.** ToppFast Diet Plan Meal are powders which must be mixed with water to be consumed. It is described as “a delicious, nutritious, metabolically-balanced diet meal. It has been developed by a physician who has medically supervised thousands of fasting patients under clinical conditions”. The two labels that were furnished included a chicken soup and a vanilla drink.

Diet products, such as dehydrated soup are food products. As such, sales of the soup are exempt from tax. The drink mix is a powdered product, and the label states that it is sold for weight loss purposes. Therefore, sales of the drink mix are subject to tax. 8/8/91.

[245.1360](#) **Yeast.** When yeast is prepared in dried, flaked, powdered, or tablet form, it is sold primarily as a dietary supplement or adjunct, that is pasteurized and the live yeast cells are killed in the process. While some yeast in this form may be used in food preparations, if yeast in such form is sold principally for use as a dietary supplement or adjunct it must be regarded under the statute and regulation as other than a food product for human consumption as therein defined. 7/24/52.

[245.1362](#) **Yohima.** Yohima products are described as supplements which give “increased strength, endurance and power” and are sold in liquid and tablet form. They are dietary supplements, the sales of which are subject to tax. 12/20/93.

[245.1364](#) **Finhalsa.** Finhalsa is a food bar, not in liquid, powdered, granular, tablet, capsule, or pill form. It is similar to a candy bar and is within the definition of “food product,” except that during the period of July 15, 1991 to November 30, 1992 such products were taxable as fabricated snacks. 4/18/91.

[245.1366](#) **Food for Life Drink Mixes.** Food for Life drink mixes, including Festive Eggnog and Chocolate Dessert, are not food products because they are in powdered form, the labels identify them as weight loss products, and they do not contain sufficient nutrients to be classified as a complete dietary food as that term is used in Regulation 1602(a)(5). 4/24/91.

[245.1367](#) **Food for Life Soups and Cereals.** Food for Life soups and Super Oats cereal are food products because both categories are specified as such in Regulation 1602(a)(1), even though they may be in dehydrated form when sold. 4/24/91.

[245.1368](#) **Heavyweight Bulk-Up.** This is described as an anabolic weight-gain product and is a powder designed to be mixed with either milk or water to be consumed. It is a dietary supplement, the sales of which are taxable. 12/20/93.

[245.1370](#) **Bee Pollen.** The following products are considered as exempt food products since they are not described on their labels as food supplements.

- (1) Whole Grain Bee Pollen
- (2) Kid-Bees Bee Pollen
- (3) Bee Pollen Tablets
- (4) Bee Propolis

The following products do not qualify for the “food product” exemption since capsule or granular forms are described on the label as dietary supplements.

- (1) Royal Energizer—Royal jelly for the Lady
- (2) Royal Energizer—For Men
- (3) Weight-Bee-Ter—All Natural Diet System. 9/28/64.

[245.1373](#) **Minerals, Enzymes, Extracts.** The products listed below are supplements or adjuncts. Their sales are subject to the sales or use tax:

Essential Minerals

Multi-enzymes

Neutral C+

OPC Grape Seed Extract

Powerjuice Fruit Juicecaps

Powerjuice Vegetable Juicecaps. 7/24/95.

(c) CANDYAND CONFECTIONERY (Taxable July 15, 1991 to Nov. 30, 1992.)

[245.1380](#) **Glaced Fruit.** Glaced fruit normally is considered as a confection and subject to tax. If, however, it is used in cooking food product, such as a fruit cake, it would be exempt. The type of package in which it is sold, such as a plain box with cooking directions on it would be evidence that it was sold for cooking purposes rather than as a confection. 6/24/53.

[245.1400](#) **Maraschino Cherries.** Maraschino cherries sold in bottles are normally regarded as exempt food products. However, when sold as a candied or glazed fruit they are subject to tax unless sold for cooking purposes. 3/24/53.

(d) SPECIFIC PRODUCTS

[245.1410](#) **Advance.** Advance is a nutritional beverage which is specifically formulated to meet the total nutritional needs of older babies. This product is recommended for use either as a supplement to mother's milk, or as an alternative to cow's milk. Thus, Advance qualifies as a food product and, its sales are not subject to tax. 7/30/84.

[245.1411](#) **All-Sport Body Quencher.** This product is a food product, sales of which are exempt, although it contains trace amounts of carbonation. Sports energy drinks are generally recognized as falling into the general food products category. 2/28/97.

[245.1412](#) **Ashitaba Percent Powder and Tablets.** Manufacturer's sales brochure for "Ashitaba Percent" powder and "Ashitaba Percent" tablets includes descriptions of the products as "vegetable supplements" that are "approved by the medical and pharmaceutical field in clinical laboratories to have exceptional nutritional value contained in the element chalcones which is essential to good health." The brochure also contains statements that it "helps strengthen the immune system, lowers cholesterol, balances the pH, and aids in preventing ulcers and many other ailments;" that "chalcone actually prevents and slows down the growth of cancer cells." Furthermore, the brochure states "there is a lot of vitamin B12 contained in the element of the "Ashitaba" and "vitamin B12 activates brain cells, increases concentration."

The Board has previously concluded that promotional literature is part of the labeling or packaging of the product that the literature describes. Therefore, even if "Ashitaba Percent" product label did not describe it as a food supplement, if the promotional literature continues to describe the product as a food supplement, the product will be considered as described on its package or label as a food or dietary supplement or adjunct. Based on this information, both of these products are excluded from the definition of "food products" by subdivisions (a)(4) of Regulation 1602. 3/29/96.

[245.1415](#) **Calistoga Juice.** Calistoga Juice, which has carbonation, is classified as a carbonated beverage, even though it contains natural fruit juices. Thus, sales of Calistoga Juice are subject to tax. 5/31/90.

[245.1415.250](#) **Crystal Geyser Sparkling Mineral Water.** This product is a carbonated beverage and, thus, it is not a food product. Sales of this product are subject to tax. 4/28/97.

[245.1416.350](#) **Diet Products and Energy Products.** Oat Cake is a food product despite its use as a diet aid.

Snapple Diet Ice Tea is a food product. The reference to “diet” merely refers to the artificial sweetener. 3/3/95.

[245.1416.450](#) **Dr. Chen’s Secret Sauce.** This is a barbecue sauce described as made from all natural ingredients. This item qualifies as a food product and its sales are exempt from tax. 4/7/94.

[245.1416.500](#) **Dried Seaweed, Algae, and Wheatgrass.** These products are sold in powdered form. Dried seaweed, algae, and wheatgrass in powdered form are exempt food products provided that the label or packaging makes no claim of the products’ dietary benefits. 8/23/93.

[245.1416.800](#) **Efficon.** Efficon is a liquid formula taken to improve male sexual performance. The product label gives detailed instructions to the dosage, how to be swallowed, and how often to be taken. A detailed warning is given as to circumstances when the user should decrease the dose, discontinue the dose, or simply not take it at all. Efficon is advertised on the label as a treatment or mitigation for male sexual problems. Accordingly, when Efficon is sold over-the-counter, its sales are not exempt from tax under section 6369. 1/28/98. (AM 1999–2).

[245.1417](#) **Evergreen.** This is a liquid product which is added to another liquid in order to be consumed. This product is designed to help fortify the blood with added zinc and to increase the body’s intake of minerals. Sales of this product are subject to tax. 4/7/94.

[245.1418](#) **Fibermed.** “Fibermed” biscuits are substantially a cereal product described as a “high fiber supplement.” Since they are not in liquid, powdered, granular, tablet, capsule, lozenge, or pill form, their sales are not subject to tax. 5/22/86.

[245.1419](#) **Food For Life Products.** Food For Life soups and cereals are exempt as food products since soup and cereals are listed in the regulation as food products and these products are not designated as food supplements or adjuncts.

Food For Life drinks and shakes are powdered products and the labels describe them as food adjuncts for the purpose of weight loss. These products are excluded from the term “food products” and are taxable.

Food For Life meal replacement bar is an exempt food product. The bar is not one of the forms excluded from exemption by Regulation 1602(a)(5). 6/6/91.

[245.1420](#) **Food Products—Exempt.** The items listed below qualify as exempt food products under section 6359.

“Food Products” include all fruit juices, vegetable juices and other beverages, including all beverages composed in part of fruit or vegetable juice, except: carbonated water, carbonated beverages, spirituous, malt, or vinous liquors. The exemption applies whether

the beverages are in liquid or frozen form, and includes all powders, concentrates or other bases for exempt beverages.

Beginning December 1, 1992, "Food Products" include all noncarbonated and noneffervescent bottled water and medicated and nonmedicated gum.

During the period July 15, 1991 to November 30, 1992, noncarbonated and noneffervescent bottled water and all chewing gum were excluded from the definition of food products for human consumption.

For the period prior to July 15, 1991, sales of noncarbonated and noneffervescent bottled water were exempt only if the individual containers were one-half gallon or more in size. Also, only nonmedicated gum was included in the definition of "Food Products".

Accent 1/11/50

Amway's Nutrilite Food Bar 5/23/78

Bitters:

Angostura 10/24/56

Orange 10/24/56

Orange Flower Water 10/24/56

Peychaud 10/24/56

Brandied Fruit and Nuts 2/2/53

Brandied Mince Meat 10/31/58

Caltrol 7/27/60

Cocktail Mixes:

Bloody Mary 8/7/64

Mai Tai 8/7/64

Scarlet O'Hara 8/7/64

Beachcomber Brand

Daiquiri 11/5/65, 9/20/66

Fog Cutter 11/5/65, 9/20/66

Mai Tai 11/5/65, 9/20/66

Margarita 11/5/65, 9/20/66

Navy Grog 11/5/65, 9/20/66

Scorpion 11/5/65, 9/20/66

Tahiti Joe's Brand

Daiquiri 3/31/66

Mai Tai 3/31/66

Margarita 3/31/66

Navy Grog 3/31/66

Pink Daiquiri

Planters Punch

Scorpion

Volcano

Zombie

Vita Pakt Citrus Products Co.

Collins Mix 11/15/65
Daiquiri Mix 11/15/65
Don the Beachcomber 11/15/65
Margarita Mix
Gimlet Mix
Margarita Mix
Screwdriver Mix
Whiskey Sour Mix
Dextrogen 2/6/52
Diced Citron 10/31/58
Dietene 5/6/60
“Duets” 10/19/56
D-Zerta 2/3/60
Enfamil Liquid 10/29/59
Enfamil Powder 10/29/59
Fudge and Icing Mix 4/4/55
Hot Buttered Rum Batter 11/20/63
Hy Pro 2/6/52
Instant Control 7/3/61
Instant Sereno 10/10/55
Korean Ginseng Products 12/12/77
Sustagen 3/21/60
Mile High Instant Food Fortified 1/16/56
Nature’s Favorite 6/14/61
Nestle’s Quik Shake 2/7/67
Nutrament 5/1/63
Pam 8/14/69
Teas:
Mate, an Argentine tea 12/10/53
Toddy 12/21/51
Yeast, Active Dry:
Fleischmann’s 8/12/52. (Am. 2000–1; Am. 2003–3).

[245.1430](#) **Food Products—Snack Foods, Candy and Confectionery.** During the period July 15, 1991 to November 30, 1992, “Food Products” excluded snack foods, candy, confectionery and nonmedicated chewing gum as such were taxable. Beginning December 1, 1992, these items are exempt food products and tax does not apply.

“Snack foods” means:

Cookies
Crackers (excluding soda, graham, and arrowroot crackers)
Potato chips
Snack cakes and pies
Corn or tortilla chips
Pretzels

Granola snacks (i.e. bars and squares)
Popped popcorn
Fabricated chips
Fabricated snacks

“Snack foods” include only items that are sold in a form suitable for consumption without further processing such as cooking, heating, or thawing.

“Snack foods” does not include:

Ice cream, milk and milk products
Vegetables, including dehydrated vegetables
Fruit and fruit products
Baby foods
Doughnuts, breads, pastry, and other bakery products (other than cookies, crackers, snack cakes and pies)
Nuts, nut meats and seeds
Unpopped popcorn
Cereals
Meat and meat products
Beef jerky and similar dried meat products
Natural pork skins

“**Fabricated snacks**” means snacks made from components, including food components, which are processed and formed. This includes items such as grain cakes, shoestring potato snacks, food bars or squares, and extruded snacks such as curls, twists and puffs. The term does not include “meal replacement bars” which supply per serving (as defined by the manufacturer), at least 250 calories and 25% of the U.S. RDA of vitamins and minerals (as established by regulations of the United States Food and Drug Administration).

“**Snack cakes and pies**” means cakes or pies which are baked or fried in individual serving sizes or cut and pre-wrapped or pre-packaged for subsequent sale in individual serving sizes, whether sold individually or packaged together. A package of single-serving items is subject to tax. Large whole cakes and pies are not taxable. Snack cakes or pies which are prepackaged in individual serving sizes are taxable. Slices of cakes or pies which are packaged to go at the time of the sale are not subject to tax.

Crackers are thin crisp wafers or biscuits, usually made of unsweetened dough. Bread items such as flat breads, matzo bread, break sticks and toast are not crackers. Crackers specifically excluded from the definition of snack foods are soda (saltines), graham and arrowroot crackers.

Baking Goods. Products which may be considered a confection but are packaged and marketed for sale as cooking or baking products, such as baking chocolate, marshmallows and glazed fruit are exempt.

Mixed Products. Products pre-packaged in individual serving sizes which contain a mixture of both food products and candy or snack foods (e.g. trail mixes, cheese and crackers) are taxable regardless of the ratio of food products to candy or snack foods. Packages which are not in single serving sizes but contain a mixture of both food products and candy or snack foods are taxable if 50% or more of the mixture contains snack foods or candy.

Combination Packages. The application of tax to combination packages which contain both food products (e.g. fruit) and nonfood products (e.g. snack foods, wine or toys) will depend upon the essential character of the complete package. If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood merchandise, a segregation must be made and measured by the retail selling price of such nonfood merchandise. Examples of products requiring such a segregation would be (1) the sale of a box containing a bottle of wine, a package of crackers, wedges of cheese and fruit or (2) cereal containing a prize or toy.

Candy and Confectionery includes chocolate-coated nuts, candied fruits, crystallized fruits and glazed fruits. Preparations of fruits, nuts or cereals in combination with chocolate, sugar, honey, candy or other confectionery are taxable unless sold for baking purposes. The method used in packaging and distributing these preparations, including the kind and size of container used, will be considered in determining the primary use for which these preparations are sold.

Labeling. If the term “snack” is used in the name of a product or on its label, the product will be presumed to be taxable unless it is clearly excluded from the definition of a “snack food.”

The following examples of taxable and exempt items have been determined by the Board of Equalization to be consistent with the changes in statutory law concerning snack foods, candy and confectionery.

Sample Taxable Items

Ak-mak Sesame Crackers
Almond Joy
Almond Cookies
Almond Roca
American Classic Minced Onion Crackers
Artificial Pork Skins (i.e. made from grain products)
Bagel Chips
Bama Pecan Pies (individual size)
Bavarian Pretzel
Bean Chips
Bolands Cream Crackers
Bolands Snap Crackers

Breath Mints
Bremner Cracked Wheat
Brown Rice Chips
Brownies (individually prepackaged)
Bubble Gum
California Diet Energy Bar
Candied Apples
Carmel Popcorn
Carnation Breakfast Bars
Carrs Water Biscuit
Cheese 'n Crackers
Cheese Puffs
Cheetos
Cheezits
Chico Popcorn Cakes
Chico Rice Cakes
Chico San Cheddar Popcorn
Chocolate Bars
Chocolate Chip Cookies
Chocolate covered fruit and nuts
Chocolate covered grahams
Cinnamon Animal Crackers
Combos Snacks
Corn chips
Cracker Jacks
Cupcakes
Diet Cookies
Ding Dongs
Dolly Madison Zingers
Doritos
Durkee French Fried Potato Sticks
Estee Sugar Free Candy
Fi-bars
Fiddle Faddle
Fig Newtons
Figurines
Flavortree Cheddar Sticks
Flavortree Party Mix
Fortune Cookies
Fruit Gems
*Fruit Roll-ups
Funyons
Gamesa Animalitos
Ginger Snaps
Graham Cookies
Graham Cookies with creme fillings

Granny Goose Bugles
Granola Squares
*Grist Mill Sharks
Gum
Gummi Bears
Hain Sesame Crackers
Hain Vegetable Crackers
Hain Rice Cakes
Hapi Crazy Mix
Hapi Soy Bits
Hapi Tokyo Mix
Harvest Day Fruit Pies (individual size)
Hershey Bars
Hershey Granola Bars
Hostess Ding Dongs
Hostess Sno-Balls
Hostess Suzy Q's
Jack La Lane Granola Bars
Jelly Beans
Keebler Tato Skins
Keebler Toasted Midley Crackers
Keebler Deluxe Graham Cookies
Keebler O'Boisies
Kelloggs Nutri Grain Bars
Kudos
Lemon Drops
Licorice
Life Savers
Lu Little School Boy Cookies
M & M's
Macaroons
Marie Lu Original Biscuits
Matzo Crackers
Moms Cookies
Nabisco Heydey Bars
Nabisco Marshmallow Twirls
Oatmeal Cookies
Onion Flavor Rings
Oreos
Peak Frean Tea Biscuits
Peanut Butter 'n Crackers
Pepperidge Farms Cheddar Goldfish
Petit Fours
Pik-nik Fabulous Fries
Pillsbury Figurines
Potato Chips

Pretzels
Pringles
Quaker Chewy Granola Bars
Reeses Peanut Butter Cups
Ritz Crackers
Sandwich Cookies
Screaming Yellow Zonkers
Sesame Snack Sticks
Shoestring Potato Snacks
Stella D'Oro Breakfast Treats
Stella D'Oro Pfeffernuesse
Sugar Cookies
Tic Tacs
Toffee Peanuts
Tortilla Chips
Tootsie Rolls
Trail Mixes with carob (individual serving sizes)
Trail Mixes with glazed fruit (individual serving sizes)
Triscuit
Truffles (candy)
Turnovers
Twinkies
Weight Watcher Bars
Wel Pac Shrimp Chips
Yogurt covered nuts and fruit
Zingers

—

* Taxable Effective 4-1-92

Sample Exempt Items

Ak-mak Armenian Cracker Bread
Apple Chips
Arrowroot Crackers
Baby Biscuits
Bagels
Baking Chocolate
Bear Claws
Beef Jerky
Beer Nuts
Bread
Break Sticks
Cakemate Candy Cake Decorations
Carnation Slendar Bars

Carrot Chips
Cheese
Chicharones (made from meat products)
Cinnamon Rolls
Corn Nuts
Cream Puffs
Dolly Madison Gem Donuts
Donuts (large or small)
Dried Fruit
Eclairs
Fried Pork Skins (made from meat products)
Fruit Juices
Gatorade
Gerber Baby Pretzels
Glazed Fruit for baking
Graham Crackers (cinnamon, honey, and shapes)
Granola Cereals
Hershey Semi Sweet Chocolate Chips
Honey Roasted Nuts
Hye Roller Soft Cracker Bread
Ice Cream
Lunchables
Marshmallows (baking product)
Matzo Bread
Meat
Melba Toast
Microwaveable Popcorn
Muffins
Nestles Butterscotch Morsels
Nuts
Pastries
Pepperoni Sticks
Pizza Rolls
Poptarts (requires further processing—heating)
Popsicles
Pudding
Ralston Chex Snack Mix
Ryvita Crispbread
Seeds
Soda Crackers (saltines) low fat, no salt, and wheat
Strudel
Unpopped Popcorn
Valley Lahvosh Cracker Bread
Wasa Crispbread
Zwieback Toast. 2/10/92.

[245.1440](#) **Food Products—Taxable.** The items listed below do not qualify as exempt food products under section 6359.

“Food Products” include all fruit juices, vegetable juices and other beverages, including all beverages composed in part of fruit or vegetable juice, except: carbonated water, carbonated beverages, spirituous, malt, or vinous liquor. The exemption applies whether the beverages are in liquid or frozen form, and includes all powders, concentrates or other bases for exempt beverages.

During the period July 15, 1991 to November 30, 1992, “food products” excluded candy and confectionery, and “snack foods.” Noncarbonated and noneffervescent bottled water and chewing gum were excluded from the definition of food products for human consumption.

For periods prior to July 15, 1991, sales of noncarbonated and noneffervescent bottled water were exempt only if the individual containers were one-half gallon or more in size.

Acidophilus 3/19/58
All-Purpose Gelatin (Dietary Supplement) 8/5/60
Apple Cider, hard 8/22/55
Bone Meal Tablets 7/27/60
“Cal-Protein” 8/23/54
Coloring, food 4/30/54
Glutamic Acid 7/27/60
Herbal Laxatives 3/13/52
NaturSlim 8/8/77
Oral Protein Supplement 8/2/51
Powdered Kelp 10/6/59
Revall’s Instant Protein (Dietary Supplement) 2/15/61
Roma 8/22/50
Special Food Supplement 12/21/61
Tryptosine 7/27/60
Veg-Amino Mineral Mix 5/31/68
Veg-O-Ready 5/6/57 (Am. 99–2).

[245.1446](#) **Fortune Delight.** This product is described as having herbal ingredients. If the label does not designate it as a food supplement, it qualifies as a food product the sale of which is exempt from tax. 4/7/94.

[245.1483](#) **Hops Used in Brewing Beer.** When breweries are the consumers of the beer they produce, ingredients which are food products are exempt even though incorporated into a taxable beverage. Such ingredients as sugar, corn grits, soy bean flakes, etc., are food products meeting this test. Hops are considered a flavoring extract and therefore a food product. Chemical additives are not food products and are subject to tax. 9/26/69. (Am. 2000–1).

[245.1487](#) **Ideal Snacks.** Ideal Snacks is a product derived entirely from vegetable sources and milk by-products and is sold in tablet form. A review of the product guide and marketing literature revealed that this product has several recommended uses. The primary recommended use is for weight control, i.e., either weight loss or weight gain.

The product literature clearly shows that Ideal Snacks is designed and prescribed to decrease the user's calorie intake. In light of this evidence, Ideal Snacks does not qualify as a food product and the sale and use of this product is subject to tax. 12/22/83.

[245.1489](#) **Isomil.** Isomil is a powdered, milk free baby food which is used as the only source of nutrients if the infant is unable to ingest milk or dairy products. Sales of Isomil are exempt as a food product. 1/4/89.

[245.1492](#) **Juice Plus & Lite.** The literature for "Juice Plus & Lite" identifies the product as a food supplement. Further, the label and brochures characterize the product as a weight management product, designed to decrease generally the intake of calories, and as a unique blend designed to increase generally the intake of vitamins, minerals, and proteins. Thus, the product is excluded from the definition of "food product" by subdivision (a)(5)(A) and (B) of Regulation 1602. 6/25/96.

[245.1497](#) **Lecithin.** This product is sold in whole, bulk form. Lecithin is a food product whose sale is exempt provided that the label or package makes no indication that the product is sold as dietary supplement or adjunct. 8/23/89.

[245.1520](#) **Mil-Kee-Whey.** This product is a whey based food beverage drink composed principally of dairy whey, nonfat dry milk, milk protein, and corn syrup. The label does not describe it as a food supplement nor does it make any weight loss claims. Mil-Kee-Whey is a food product the sale of which is therefore exempt from tax. 1/23/84.

[245.1530](#) **Mineral Oil.** Mineral oil is not a food product even though consumed by humans. It has no nutritional value and is not broken down by the digestive system. Its use is for medicinal purposes and therefore its sales are subject to tax. 7/17/56.

[245.1545](#) **Modifit.** Modifit consists primarily of nonfat dry milk solids, fructose, calcium casinate, cocoa, soy bean oil, multodextrin, egg white solids, and a number of vitamins and minerals. This product is a complete dietary food and, therefore, qualifies as an exempt food product. 5/11/84.

[245.1588](#) **Nature's Sunshine Products.** The following named products of Amtec Industries, Inc., marketed under the Nature's Sunshine Product label were found to be food products although they are sold in capsule form because the label makes no claims that would make them food or dietary supplements or adjuncts. They generally are used as spices or seasoning, or to make teas or soups. They are all within the classification of "unusual foods" under Regulation 1602(5):

Black Walnut	GingerAlfalfa
Chickweed	Gotu Kola
Combination GRH-X	Kelp
Garlic	Licorice Root

Concentrated chickweed, alfalfa, and black walnut are also within the definition of unusual food. 9/28/82.

[245.1600](#) **Natures Treasures International Products.** The following products are “unusual foods” pursuant to Regulation 1602 (a)(5) since these products are not described on their labels as food supplements or the equivalent. As such the sales of these products are not subject to tax:

Whole Grain Bee Pollen

Kid-Bees Bee Pollen

Bee Pollen Tablets

Bee Propolis

The following products do not qualify as food products since they are sold in liquid, powdered, granular, tablet, capsule, lozenge, or pill form and are described on their labels as dietary supplements or adjuncts. Therefore sales of these products are taxable:

Royal Energizer

Royal Energizer for Men

Weight-Bee-Ter 9/28/84.

[245.1616](#) **Onion International Iris Herbs and Herbal Products.** The following are unusual foods and qualify as food products for human consumption. As such, tax does not apply to the sale or use of the following products:

Super Energy (Item #201–30)	Beet Powder (Item #607–60)
Natural Energy Plus (Item #205–30)	Herb Kal (Item #608–60)
Kola Nut (Item #202–30)	Nature Trim 200 (Item #1402–30)
Nature Trim 100 (Item #401–30)	Nature Trim 102 (Item #1403–30)

Cy-Nus (Item #807–30)	Lifeforce (Item #601–30)
FE-30 (Item #803–30)	Lifeforce PM (Item #402–30)
HRPEZ (Item #810–30)	Lifeforce III (Item #604–30)
Colon Clenz (Item #811–30)	Mead Pak (Item #601–30)
Skin Care (Item #813–30)	Nature Calm (Item #602–30)
CCF (Item #912–60)	CFY (Item #603–30)
Lifeforce III B (Item #604–30B)	Arth-Ry-Tus (Item #804–30)
Lifeforce III C (Item #604–30C)	AL-R-G (Item #606–60)
Sod Ginseng (Item #605–30)	Arth-Ry-Tus Pan (Item #805–60)
<u>STRS (Item #606–30)</u>	

The following items are described on its label as a “food supplement” and they do not qualify as exempt food products. Tax applies to the sale or use of the following products:

079 Spiruline

077 Spiruline Ginseng

026 Lifeforce Junior. 2/16/84.

[245.1620](#) **Osmolite.** Osmolite is an isotonic liquid food which is designed for patients who are particularly sensitive to hyperosmotic feeding, and can be used for the total or supplemental nutrition by oral feeding. The principal ingredients are water, hydrolyzed corn starch, sodium and calcium caseinates, coconut oil, and soy protein.

Since Osmolite is not sold as a dietary supplement or adjunct, it comes within the definition of a “food product” as provided under section 6359. 3/7/84

[245.1630](#) **Pedialyte.** Sales of Pedialyte are nontaxable. 5/29/96.

[245.1632](#) **Pedialyte and Other Dehydration Products.** The following products are nontaxable food products:

Pedialyte® Oral Electrolyte Maintenance Solution—Freezer Pops

Naturalyte® Oral Electrolyte Solution

Infalyte® Oral Electrolyte Maintenance Solution

Kao Lectrolyte™ Electrolyte Replenisher (power packets)

Isomil® DF Soy Formula For Diarrhea. 5/16/97.

[245.1633](#) **PediaSure.** When a product coming within the general definition of food product is labeled as a supplement, it is excluded from the definition of food unless qualifying as a complete dietary food for purposes of subdivision (a)(5) of Regulation 1602. It was previously concluded that Ensure and products substantially identical in labeling and content to Ensure qualify as complete dietary foods. PediaSure is labeled for use by children aged 1 to 10 and has slightly less nutritional content than does Ensure. If PediaSure's label were consistent for use by adults, its nutritional content would be insufficient to be regarded as a complete dietary food. However, when used as labeled, PediaSure has at least the same nutritional value for children aged 1 to 10 as does Ensure for adults, which is consistent with its labeling that it can be used for "total nutritional support." As such, PediaSure qualifies as a food product, sales of which are exempt from tax. 9/9/99. (2000-2).

[245.1635](#) **P.V.M. Weight Reduction Plan.** P.V.M. is described on its label as "the P.V.M. Weight Reduction Plan . . . a High Protein Powder with vitamins and minerals . . . A formulated meal replacement when added to orange juices or low-fat milk"

The P.V.M. Weight Reduction Plan does not qualify as a "food product." It is described on its label as a "weight reduction plan" and is designed to increase vitamin and mineral intake and decrease caloric intake. Accordingly, tax applies to the sale of this item. 8/1/78.

[245.1700](#) **Samana #9.** According to the manufacturer's promotional materials, "Samana #9 is a total food concept which incorporates one-third of the National Research Council recommended daily allowances for all the essential nutrients in a 20-gram serving or meal If taken as directed, this product supplies all the U.S. Recommended Daily Requirements to vitamins, minerals and protein."

Since it is designed to be a complete food product, Samana #9 qualifies as a food product whose sales are not subject to tax. 7/22/77.

[245.1705](#) **Simply Nutritious Mega C.** This is a noncarbonated fruit juice that has been fortified with vitamin C. Since the label does not indicate it is a food or dietary supplement or adjunct, this product is a food item, the sale of which is exempt from tax. 3/16/98. (AM99-2).

[245.1709](#) **Slender Now.** Slender Now is a program consisting of the following four different products:

- (1) Slender Now Formula 1: An exclusive formula, protein drink.

- (2) Slender Now Formula 2: An exclusive vitamin and mineral formula.
- (3) Slender Now Formula 3: A special vitamin B6 dietary supplement in a base of food supplements.
- (4) Slender Now Formula 4: A blend of oils, high in essential polyunsaturated fatty acids.

According to its informational pamphlet, the “Slender Now” program is designed to “regulate carbohydrate intake, arrest hunger pangs, and, . . . provide various essential daily nutrient.” Formula 1 is “designed to be used as an aid in Dietary Weight Control which includes caloric restriction.” Formula 2 and 3 appear to be vitamin supplements. Formula 4 is designed to be added to Formula 1 and also as a salad preparation.

Under the definition of food products in Regulation 1602, Slender Now would not be considered a food product. Formula 1 is designed specifically to decrease caloric intake, Formulas 2 and 3 are essentially vitamin and mineral supplements, and Formula 4 is a dietary adjunct since it is designed to be added to Formula 1 once a day. 7/22/77.

[245.1716](#) **Sun Bars.** This is an individually-wrapped “granola-type” food bar which is considered a food product and, thus, its sale is not subject to tax. 4/7/94.

[245.1720](#) **Sundance Natural Juice Sparkler.** This product is carbonated and contains only 70% fruit juice. As such, its sale is taxable as a carbonated beverage. 11/13/89.

[245.1740](#) **Sunny Days.** This is a mouthdrop which is for the purpose of freshening breath. Sales of this product are subject to tax. 4/7/94.

[245.1780](#) **Sustacal.** Sustacal is a nutritionally complete food in liquid form and may be used either as a meal substitute or taken as a person’s sole source of nutrition. This product qualifies as a food product and, therefore, its sales are not subject to tax. 7/30/84.

[245.1820](#) **Tom and Jerry Batter and Eggnog Batter.** Tom and Jerry Batter and Eggnog Batter are exempt food products even though their principal use is as ingredients of alcoholic drinks. The batters themselves are made of ingredients which are themselves food products and they are ultimately intended for human consumption. Accordingly, the sales of these products are exempt as food products for human consumption. 12/1/50.

[245.1830](#) **Trader Joe’s Lecithin Granules.** These are sold in a one pound bag. No claim has been made regarding this product. The label states only the name of the product, the weight, the nutritional value of one tablespoon, and the caloric count per gram.

Lecithin Granules are not considered “food products.” They are a dietary or food supplement designed to remedy specific dietary deficiencies consisting of ingredients

which have been specially mixed or compounded for the purpose of providing a high nutritional source. Tax applies to the sale of Lecithin Granules. 6/5/78.

[245.1900](#) **Vantage Plus.** Vantage Plus is a powder that can be mixed with other foods and beverages. 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.” Furthermore, its label does not indicate that it is designed to increase or decrease user’s vitamin, protein or caloric intake, nor is it described as a dietary or food supplement. Thus, Vantage Plus is a food product under Regulation 1602 and its sales are not subject to tax. 10/1/84.

[245.1904](#) **Vitalite Snacks.** The label describes this product as “Dried Seasonal Fruits and Vegetables.” Dehydrated foods generally are considered as “food products” the same as their regular form. Thus, sales of these products are exempt from tax. 4/7/94.

[245.1910](#) **“Wine Without Alcohol.”** “Wine Without Alcohol” is 99.51% alcohol free and is not carbonated or effervescent.

Although this wine product would not be considered an alcoholic beverage pursuant to section 23004 of the Business and Professions Code, for sales and use tax purposes such products are considered wine notwithstanding their containing less than 0.505% alcohol. This product falls within the category of spirituous or vinous liquors because it is the fermented juice of the grape and contains alcohol. Sales of this beverage are not sales of food products under Regulation 1602. 7/31/86.

[245.1920](#) **Wonder Bee Royal Jelly and Kiku Royal Jelly.** Royal jelly falls into the category of “unusual food” as long as the label does not describe it as a “food supplement” or the equivalent. Accordingly, Wonder Bee Jelly is a “food product” since its label and the accompanying literature does not describe it as a dietary food supplement. On the other hand, Kiku Royal Jelly is labeled as a “nutritional dietary food supplement”. Therefore, it does not qualify as a food product and its sale is subject to tax. 10/25/89.