



TAX Information

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Sales of vitamin-enhanced water are not taxable

This is a clarification to the article written in the September 2008 Tax Information Bulletin concerning sales of vitamin enhanced water beverages. The article previously stated: "...sales of vitamin enhanced water beverages are taxable when these products' labels, packaging or product literature make specific medicinal claims..."

For clarification, a medicinal claim made on a food products' label by a manufacturer does not necessarily render the food product taxable. Instead, the product must actually be a medicine to not qualify for the food products exemption.

Sales of non-carbonated, vitamin enhanced, water beverages are not subject to tax because they are considered food products. Medicinal claims made on these water beverages' labels do not change their classification as food products. The compounding of nutritional elements, such as vitamins, in an item traditionally accepted as food does not render the sale of the product taxable nor does including the word "vitamin" in a food product name, description, or product advertising.

Sales of products in liquid, powdered, granular, tablet, capsule, lozenge, or pill form and described on their package as food supplements, food adjuncts, dietary supplements, or dietary adjuncts are subject to tax. Such products include, but are not limited to, over-the-counter vitamins, liquid vitamins, and concentrated vitamin boosts, shots, etc. which are designed to give a quick concentrated boost or shot of vitamins and/or energy.

For additional information, please see [Regulation 1602, Food Products](#) or by calling our Taxpayer Information Section at 800-400-7115.

If you sell cigarettes, remember to check the California Tobacco Directory

Retailers are reminded that it is illegal to purchase cigarettes and roll-your-own products that are not listed on the Attorney General's [California Tobacco Directory](#). Please remember to refer to the Directory for a list of manufacturers and brand families that are certified as being in compliance with California law. Violations of the law are subject to civil and criminal penalties, and products not listed on the directory can be seized as contraband.

Distributors should be aware that it is illegal to put a state tax stamp on cigarettes or pay the tax on roll-your-own product unless the manufacturer and the brand family are authorized for sale and listed in the California Tobacco Directory.

Sign up for email notification of proposed new annotations

Annotations are summaries of the conclusions reached in selected legal rulings of BOE's Legal Department. Annotations do not have the force and effect of law, but they do provide helpful guidance. Business Taxes annotations address various issues involving the sales and use tax and the many special tax and fee programs administered by the BOE.

The advice provided in annotations may be relied upon when the BOE provides a written communication that includes the annotation, and is addressed to a person or his or her representative. The written communication must involve the same fact pattern as that presented in the annotation or in the underlying legal opinion. The BOE's written communication may protect that person from owing tax, penalties and interest if we should give erroneous information.

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Business Taxes annotations are published in the Business Taxes Law Guide (BTLG) at www.boe.ca.gov/business/Vol2/suta.pdf. Sales and Use Tax Annotations are in volume 2, and Special Taxes and Fees annotations are in various locations in volumes 3 and 4 of the BTLG – see the Table of Contents at www.boe.ca.gov/business/bmaintoc.pdf.

A Current Legal Digest (CLD) is a 30-day notice of proposed changes to Volume 2 of the BTLG. Proposed changes include new annotations, suggested revisions of existing annotations, and annotations to be deleted. The new annotations and suggested revisions to existing annotations contained in the CLDs are drafts and may not reflect the language that will be used in the final annotation.

Any person may request Current Legal Digests (CLD) and associated backup legal correspondence. CLDs for Special Taxes and Fees annotations are posted on the BOE's web site at www.boe.ca.gov/sptaxprog/spannotations_cld.htm; you may now subscribe to our convenient email service at www.boe.ca.gov/sptaxprog/cld_subscribe.htm to access the latest Special Taxes and Fees CLD on line. For Sales and Use Tax CLDs, visit us at www.boe.ca.gov/sutax/sutdcl.htm to view the latest CLD and at www.boe.ca.gov/sutax/cld/index.htm to subscribe to email notification of new CLDs.

Go completely paperless with eCheck

Many of you have already made the transition from paper to electronically filing (efiling) your sales and use tax returns. You can make your transaction entirely paperless when you choose to pay electronically with eCheck Automated Clearing House (ACH) Debit. There are many benefits to paying by eCheck.

It's easy: When you efile your return, simply choose eCheck as your payment method and supply your bank routing number and account number.

It's convenient: You choose the effective date of your payment by designating any day up to the due date of the return or prepayment.

It's paperless: You don't need to mail anything to BOE when you file and pay electronically.

It's safe: Only you can initiate the electronic payment. And there is no worry about your check being stolen or lost in the mail.

It's free: Paying by eCheck is free and also makes your entire transaction worry-free. No need to worry about remembering to send in a separate payment.

Now that you have tried efilings, give eCheck a try for entirely paperless filing in one, easy transaction!

Discount Coupons for Taxable Food and Beverages

Two-for-one coupons

If you accept two-for-one coupons or other discount coupons or cards that allow customers to purchase food or beverages at a reduced price, your tax liability is based on the total amount you receive from the sale. This total amount will include any reimbursement you may receive from any other sponsor or promoter.

When meal discount is offered directly by you

You offer a two-for-one coupon. The customer orders two meals, both for \$10 each. After applying the coupon, the customer is charged \$10 for both meals; tax applies to the \$10 total. Any optional tip that may be added as an additional amount by the customer is not included in the taxable measure.

The customer orders a \$10 meal and an \$8 meal. After applying the coupon to the lowest priced meal, the customer is charged \$10 for both meals. Tax applies to the \$10 total (before any optional tip).

You offer a coupon for a 50% discount off the regular meal price, with the maximum discount of \$4. The customer orders a meal for \$10. After applying the maximum discount of \$4, the customer is charged \$6 for the meal. Tax applies to the \$6 charged for the meal (before any optional tip).

When a discount is offered by a sponsor/promoter

If you receive any reimbursement on a sale from a sponsor/promoter, the amount received must be included as part of total sales subject to sales tax. For example, a sponsor/promoter agrees to reimburse you \$4 for every redeemed coupon. On each sale you receive \$10 from your customer and \$4 from the sponsor/promoter. The amount subject to sales tax using this example will be the total amount received, \$14.

For additional information please refer to [publication 22, Dining and Beverage Industry](#), available from www.boe.ca.gov, or call our Taxpayer Information Section at 800-400-7115.

Are you required to register and report fees to us under one of our environmental fee programs?

Many businesses and organizations are often surprised to learn we administer more than 20 other special tax and fee programs besides sales and use taxes. The Environmental Fees Division created two new publications that provide a

general overview and understanding of fee applications. [Publication 412](#), *Introduction to Environmental Fee Programs Administered by the Board of Equalization*, and [publication 413](#), *Environmental Fee Programs at a Glance* explain many of the environmental fee programs administered in this state, such as; the tire fee, the generator fee, and many others.

Please take a moment and visit our website to review our new publications, know more about environment obtain contact and registration information.

You are entitled to a refund if you overpay your taxes

The BOE strives to serve the public through fair, effective, and efficient tax administration. Therefore, both overpayments and underpayments are treated equally. If you overpay your taxes, you may file a claim for refund.

Although a claim doesn't require a specific format, it must be in writing, and should state the following:

- The specific reasons you paid too much.
- The excess amount paid.
- The reporting period or periods for which you paid too much tax.

The BOE has a claim form available for you to use, [BOE-101](#), Claim for Refund or Credit. When submitting a claim for refund, you should submit copies of detailed documents that support your claim. Refunds are treated with priority. Therefore, providing complete supporting documentation will expedite the process.

You should also include the following information:

- Your name and account number.
- Business name.
- Your social security number or federal employer identification number.
- Contact person.
- Telephone number.

There are deadlines for filing your claim for refund. Whichever of the following dates occurs last is your filing deadline.

- Three years from the due date of the return on which you paid too much tax.
- Six months from the date you overpaid tax.
- Six months from the date a determination (billing) becomes final.
- Three years from the date we collected an involuntary payment, such as a levy or lien.

For additional information, [publication 117](#), *Filing a Claim for Refund*, is available at www.boe.ca.gov. The publication includes the form BOE-101.

How should you document your sales for resale?

If you make a sale for resale, you should, in good faith, obtain a timely resale certificate from your customer in order to document the sale as nontaxable. Just having a copy of the customer's seller's permit is not enough to support the resale.

What information is needed in a resale certificate?

A resale certificate may be in any form, such as a note, letter or memorandum. However, it must contain the following information:

- The name and address of the purchaser.
- The number of the seller's permit held by the purchaser (if the purchaser is not required to hold a California seller's permit, see Note).
- A description of the property being purchased.
- A statement that the property is being purchased for resale. The certificate must contain the phrase, "for resale." Terms such as "nontaxable" or "exempt" are not sufficient.
- The date of the document.
- The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

Note: A business may not be required to hold a California seller's permit (for example, it may not make sales in this state). If you are selling to a purchaser who is not required to hold a seller's permit, but wishes to make a purchase using a resale certificate, the purchaser must indicate on the certificate that he or she does not hold a California seller's permit and why a permit is not required.

Timely acceptance

To be valid, a resale certificate must be submitted on a timely basis. This means that it must be taken at or prior to the delivery of the property to the purchaser, before you bill the purchaser for the property, or at any time with-in your normal billing and payment cycle.

For more information, see:

- [Regulation 1668](#), *Sales for Resale*
- [Publication 103](#), *Sales for Resale*
- [Publication 42](#), *Resale Certificate Tips*

Closing out your seller's permit

As a retailer, it is important to inform the BOE to close out your permit when any one of the following occurs:

- You are no longer actively engaged in business.
- You sell your business or stock of goods to someone else.
- You change the type of ownership for your business (for example, from a sole proprietorship to a corporation or partnership).
- When your partnership agreement calls for dissolution of the partnership and the formation of a new partnership when a change in partner(s) occurs.

If you fail to notify us of these changes, you may be liable for tax, interest, and penalties that are incurred after you no longer own or operate the business.

If you sell your business, change partners, or close out your business, you must let us know the following information, in writing:

- The date you stopped being actively engaged in business.
- Your reason for not being actively engaged in business.
- The name(s) of any partner(s) who have disassociated from or have been added to the partnership.
- The means you used to dispose of your fixtures, equipment and resale inventory.
- The purchase price of the inventory you retain.
- Your current address and daytime telephone number.
- You should also send your seller's permit, if available.

Please refer to [publication 74, *Closing Out Your Seller's Permit*](#), for complete instructions. The publication includes form [BOE-65, *Notice of Closeout for Seller's Permit*](#), which must be completed. We will then review the completed form and contact you if more information is required. If none is

needed, we will close out your account and cancel your seller's permit.

You also need to file your final sales and use tax return. After you have paid your entire liability, staff will return any security you have on deposit. It is important to remember, even after providing all information and having your permit closed out, you should keep required records for at least four years unless we give you specific, written authorization to destroy them sooner. Exception: Records that cover reporting periods before January 1, 2003, may be covered by an extended statute of limitations if you did not participate in the 2005 tax amnesty program, or if fraud or intent to evade tax is discovered during an audit. You must keep those records for at least ten years. If you are being audited, you should retain all records that cover the audit period until the audit is complete, even if that means you keep them longer than four years. In addition, if you have a dispute with us about how much tax you owe, you should retain the related records until that dispute is resolved. For instance, if you appeal the results of an audit or another determination (billing), or you file a claim for refund, you should keep your records while that matter is pending.

More articles available in the new online version!

Starting with this issue, there is a brand new online version of the Tax Information Bulletin! Instead of merely downloading a PDF of the printed copy, the new online edition is a true web-based publication with dynamic content. Gone are the extra stand alone articles—they are now simply incorporated in the online issue. For this edition, we have three additional articles that are not in the printed version:

- Why is cold food taxable at an amusement park and similar venues?
- New or revised reference material
- Small business fairs

We invite you to take a look at www.boe.ca.gov/news/tib09.htm.

For More Information

All telephone numbers are toll-free.

Internet

www.boe.ca.gov
www.taxes.ca.gov

Taxpayer Information Section

800-400-7115
TDD/TTY: 800-735-2929

Requests for Fax Copies

800-400-7115
(Choose automated services)

Seller's Permit Verification

888-225-5263
www.boe.ca.gov

Taxpayers' Rights Advocate

888-324-2798
www.boe.ca.gov

Tax Evasion Hotline

888-334-3300

State Legislation

www.leginfo.ca.gov/bilinfo.html

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Board of Equalization
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