



STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)

450 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

MEMBER
First District

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

January 31, 1994

BURTON W. OLIVER
Executive Director

Mr. [B]

--- ---

P.O. Box XX

--- ---, California XXXXX

Re: SR -- XX-XXXXXX
Herbs as Foods

Dear Mr. [B]:

The State Board of Equalization has requested the Legal Division to respond to your letter to it of December 9, 1993. I apologize for the delay. I only just received your letter.

You indicate that you are in the business of selling herbal/food combinations. You are concerned that new FDA regulations require that sellers of herbal/food combinations can make no claims of nutritive value for these products. You ask if you need to pay sales tax on your sales of these products.

OPINION

Under California law, no particular claims of nutritive value are required for an item to be considered a food for human consumption. Changes in FDA definitions thus have no impact on California sales and use tax law. We have previously determined that herbal products the labels of which make no medicinal claims or designate the product as a food supplement or adjunct are food products under Revenue and Taxation Code Section 6359. (Annot. 245.0500. Sales and Use Tax Annotations are excerpts from previous Legal staff opinion letters and serve as a guide to staff positions.)

You enclosed a label with your letter. The label does not claim medicinal properties for the product nor call it a dietary supplement or adjunct. Therefore, the herbal/food products you sell are foods for human consumption the sales of which are exempt from sales and use tax under Regulation 1602.

For your information, I have included a copy of Regulation 1602. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosure: Reg 1602

A "medicinal claim" on the product label is no longer used as a basis for differentiating a food product from a medicine. Please see Annotation 245.0724 (11/17/08). RDT. 7/2/09.