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## Opinion of the Tax Commissioner

Date Issued: May 10, 2000

Opinion No: 00-0002

Tax: Sales

XXXX  
XXXX  
XXXX

Subject: Nutritional Supplements

This request for an Opinion of the Tax Commissioner was received on March 31, 2000. This request concerns whether milk based nutritional supplements such as XXXX and XXXX are subject to sales tax.

The taxpayer has alleged the following factual circumstances.

“Our company dispenses pharmaceuticals, medical supplies and nutritional supplies to nursing home facilities in Ohio as well as other states. Recently, we have received several phone calls from these facilities claiming that we were incorrectly charging them tax on tax exempt products. The items in question include milk-based nutritional products such as XXXX and XXXX...Is the sales of these products nontaxable, given that they are a food supplement and help sustain life?”

High nutrient supplements, such as XXXX and XXXX, have been declared to be food items if they are “ ‘sold primarily’ for consumption to relieve hunger, provide bulk and fullness, and furnish nourishment for fitness, energy and growth.” *Charles E. Sekeres and Physician’s Weight Loss Center, Inc. v. Limbach* (January 7, 1987), BTA No. 85-B-104 and 85-D-105, unreported. Therefore, these items would not be subject to Ohio sales tax when consumed off the premises where sold.

This opinion applies to XXXX only and may not be transferred or assigned.

In addition, the tax consequences stated in this opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the taxpayer to be aware of these changes . R.C. 5703.53 (E).

Thomas M. Zaino  
Tax Commissioner