STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

February 10, 1995

Dear:

I am responding to your letter of December 16, 1994. You ask how tax applies to your repairs of medical equipment for hospitals in California.

You contract with hospitals in California to repair their medical equipment. Your independent sales representatives pick up the equipment in California and send it to one of your out-of-state vendors to perform the repairs. After the equipment has been repaired, it is returned to the hospital and you bill the hospital for the repairs. For purposes of this opinion, we assume that the out-of-state vendors ship the repaired equipment by common carrier directly to the hospitals.

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in California unless the sale is specifically exempted by statute. (Rev. & Tax Code § 6051.) When sales tax does not apply, use tax is imposed on the storage, use or other consumption of tangible personal property purchased from a retailer for use in California. (Rev. & Tax. Cede §§ 6201, 6401). Although the use tax is imposed on the purchaser, if the retailer is engaged in business in this state, it is required to collect the applicable use tax from the purchaser and pay it to the Board. (Rev. & Tax. Code §§ 6202, 6203, 6204.) Here, if you are regarded as selling tangible personal property to the hospitals, those sales would occur outside California when the vendors ship the repaired property to the hospitals on your behalf. Thus, the applicable tax would be use tax.

As explained in Regulation 1546, a copy of which is attached, you are regarded as the retailer of the parts and materials you furnish in connection with your repairs if the retail value of that property is more than 10 percent of your total charge, or if you separately state the charge for that property. When you are a retailer of the parts, tax applies to your separately itemized charge for the parts. If you do not separately itemize the charge, tax applies to the fair retail selling-price of the parts as determined by the Board based on information available to it.

When the retail value of the parts and materials furnished in connection with the repairs is 10 percent or less of your total charge and you do not separately state a charge for that property, you are regarded as the consumer of the parts and materials. If you are regarded as consuming the parts in California, tax applies to the sale to you or to your use of such property in this state.

If you are a retailer selling tangible personal property for storage, use, or other consumption in this state and you are engaged in business in this state, you must register with this Board for purposes of collecting use tax from your customers and paying the tax to the Board. (Rev. & Tax. Code §§ 6203, 6226.) As relevant here, "retailer engaged in business in California" is defined by subdivisions (a) and (b) of Revenue and Taxation Code section 6203 as follows:

> "(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.
>
> "(b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property."

You have "independent sales representatives" in California. Thus, you are a retailer engaged in business in this state. You are required to register with the Board for collection of use tax, and you are required to collect the applicable use tax on your sales of parts and materials to California purchasers, as explained above, and remit that tax to this Board.

If you have any questions, please do not hesitate to write again.

Very truly yours,

Victor G. Matl
Tax Counsel

VGM:cl

Enclosure

cc: Out-of-State District Administrator