

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 324-3828

April 4, 1991

S--- P. M---, D.D.S.  
XXX --- Street  
--- ---, CA XXXXX

RE: [No Sales Permit]

Dear Dr. M---:

Your letter of February 23, 1991 to the State Board of Equalization has been referred to the Legal Division which has assigned the responsibility of answering to me. You have requested advice as to whether you should include the cost of certain items which you will dispense from your office in the cost of your service or charge separately for them.

You set forth the factual background of your problem as follows:

“I will be dispensing items out of my office that I feel are necessary for the successful treatment of various dental conditions. Items such as water irrigation devices for the treatment of chronic periodontal conditions, prescription strength fluoride mouthrinses for hypersensitive teeth, irrigating syringes for post-extraction osteitis, and the like.”

There appears to be no question that sales of the items you list are “appliances” made subject to tax by Revenue and Taxation Code Section 6369(b)(2).

Dentists are considered to be “doctors” for the purpose of the prescription medicines exemption from sales and use tax, interpreted and implemented by Regulation 1591 (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law). As such, they must hold seller’s permits unless they sell only exempt prescription medicines, or unless, by virtue of making a lump-sum charge for medicines and services, they are consumers. In addition, dentists are considered to be consumers of materials, supplies, and dental laboratory products and other tangible personal property which they use in performing their services. (Reg. 1506(c).)

In California sales and use tax, the taxable event is the sale to the ultimate consumer. Retailers may sell tangible personal property ex-tax for resale when the purchasers are other retailers, but must pay tax and collect sales tax reimbursement when they sell to consumers.

How you wish to charge your patients is a matter solely within your business judgment. If you include the cost of the items which you sell in the total amount which you bill your patients, you will be considered under the above authority to be the consumer (the end purchaser) of those items. Your suppliers must pay sales tax and may collect sales tax reimbursement (or collect use tax if the transaction is not subject to sales tax as, for example, in the case of an out-of-state supplier) on the transactions. Sales tax, then, would not be owed on the transfer of the items to your patient. If you charge separately for the items, you will be considered as selling them at retail and must obtain a seller's permit. (Rev. & Tax. Code § 6066.) You then may purchase the items ex-tax for resale by issuing your suppliers resale certificates substantially in the form required by Regulation 1668. You would pay sales tax, and may collect sales tax reimbursement, on the transfer of the items to your patients.

For your information, I have enclosed copies of Pamphlet No. 45, "Hospitals", and Regulations 1506 and 1668. 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

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Encs.