

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
916/445-2641

August 20, 1985

Mrs. G--- G---
XXXX So. --- Dr. #X
--- ---, CA XXXXX

Dear Mrs. G---:

Your letter of June 26, 1985 has been referred to the undersigned for reply. You request that we reconsider our opinion that sales of blood testing equipment and related supplies used by diabetic patients are subject to sales tax.

We understand that blood monitoring equipment and related supplies are prescribed by your husband's physician for use in your husband's home diabetic treatment. Essentially, the blood testing equipment and related supplies are used by your husband twice daily to determine his blood sugar level so that he is sure of the amount of insulin to take. With the blood monitoring equipment at home, your husband does not have to visit his physician as frequently.

Section 6369 of the Revenue and Taxation Code (copy enclosed) provides that prescription "medicines" are exempt from sales and use tax. Although an item, device, or apparatus may be prescribed by a physician for the treatment of a patient, for the sale to be exempt from sales tax, the item must qualify as a "medicine" under Section 6369.

Revenue and Taxation Code Section 6369(b)(2) provides that the following items are excluded from the term "medicines:"

"Articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivance, appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof." (Emphasis added.)

However, notwithstanding such exclusion, the Legislature has by statute included within the definition of "medicines" certain named devices, instruments, apparatus, appliances and physical equipment. In particular, Section 6369(e) of the Revenue and Taxation Code includes within the definition of "medicines:"

“Insulin and insulin syringes furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this section.”

Pursuant to Section 6369(e)*, only insulin and insulin syringes are exceptions to the items excluded from the term “medicines” in Section 6369(b)(2). We therefore remain of the opinion that blood testing equipment and related supplies other than insulin and insulin syringes do not qualify as “medicines” under Section 6369(e), nor do they qualify under any of the other provisions of Section 6369, and therefore, the sale of these items is subject to sales tax.

If you have any further questions concerning this matter, please write this office.

Very truly yours,

Donald J. Hennessy
Tax Counsel

DJH:ba

* But see now Reg. 1591.1(b)(5), ¶2.
SPJ 3/15/02

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

December 5, 1990

Mr. G--- K. H---
XXXX --- Avenue
---, California XXXXX-XXXX

Re: FR --- XX-XXXXXX

Dear Mr. H---:

In your letter of October 10, 1990, you requested an opinion that the sales of glucose test strips* are exempt from sales or use tax.

I. FACTUAL BACKGROUND.

As I understand it from your letter, you have been a diagnosed diabetic for some thirty plus years. Your doctor has requested that you monitor your blood glucose levels four times daily, record the results, and give them to him at each office visit. He has also given you written prescriptions for the glucose test strips. You do not supply any information as to how those test strips are used. I assume that you dip them in a blood sample, and they register glucose content by some change, such as turning a different color.

II. OPINION.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale is tangible personal property and not a sale at retail is upon the person who makes the sale...." (§ "Exemptions from taxation must be found in the statute." (Market St. Ry. Co. v. Cal. St. Bd. Of Equal. (1953) 137 Cal.App.2d 87, 96 (290 P.2d 201.)) "The taxpayer has the burden of showing that he clearly comes within the exemption." Standard Oil Co. v. State Bd. Of Equalization 1974) 99 Cal.App.3d 765 (114 Cal.Rptr. 571).)

Section 6369 of the Revenue and Taxation Code, interpreted and implemented by Sales and Use Tax Regulation 1591, provides that prescription “medicines” are exempt from sales and use tax. Although an item, device, or apparatus may be prescribed by a physician for the treatment of a patient, for the sale to be exempt from sales tax, the item must qualify as a “medicine” under Section 6369.

Revenue and Taxation Code Section 6369(b)(2) provides that the following items are excluded from the term “medicines:”

“Articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof.” (Emphasis added.)

(See, also, Regulation 1591(c)(2).)

However, notwithstanding such exclusion, the Legislature has by statute included within the definition of “medicines” certain named devices, instruments, apparatus, appliances and physical equipment. In particular, Section 6369(e) of the Revenue and Taxation Code includes within the definition of “medicines;”

“Insulin and insulin syringes furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this section.”

(See, also, Regulation 1591(h).)

Section 6369(e), then, excepts only insulin and insulin syringes from the items excluded from the term “medicines” in Section 6369(b)(2). We therefore are of the opinion that blood testing equipment and related supplies other than insulin and insulin syringes do not qualify as “medicines” under Section 6369(e), nor do they qualify under any of the other provisions of Section 6369, and therefore, the sale of these items is subject to sales tax.

As noted above, exemptions from tax are strictly controlled by this language of the statute providing the exemption. The Board of Equalization, while it may adopt and enforce reasonable rules for carrying into effect the expressed purpose of a statute, is prohibited from exercising its discretion to modify, alter or enlarge the provisions of the legislative act being administered. (Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal.3rd 392, 426 [128 Cal.Rptr. 183, 546 P.2d 687]; Am. Distilling Co. v. St. Bd. of Equalization (1942) 55 Cal.App.2d 799, 805 [131 P.2d 632].)

For your convenience, I have enclosed a copy of Regulation 1591. If you have any further questions concerning this matter, please write this office.

Very truly yours,

John L. Waid
Tax Counsel

JLW:cs
Enclosure Regulation 1591
0031E

bc: --- District Office

<p>*See now Reg. 1591.1 (b)(5), ¶2. SPJ 3/15/02</p>

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(916) 324-3828

August 29, 1991

Mr. D--- P. C---
D--- R--- C---
XXX --- --- #XXX
--- ---, CA XXXXX

Re: SR --- XX-XXXXXX

Dear Mr. C---:

The State Board of Equalization has assigned your letter to it of July 3, 1991, to the Legal Division for response. The Legal Division has, in turn, assigned it to me. You have requested advice as to the applicability of sales and use tax to sale of certain items by your company, D--- R--- C--- ("DRC").

As I understand it, DRC is a center for treatment of diabetes and sells Blood Glucose Diagnostic Equipment and test supplies. DRC sells these items pursuant to a prescription by the patient's physician. You also describe DRC as a "health facility".

OPINION

You already have a copy of Board of Equalization Pamphlet No. 45, "Hospitals", which includes the Sales and Use Tax Regulation applicable in this case – Regulation 1591. You state that it designates Diagnostic Glucose testing as a medicine when applied externally or internally to the patient.

First of all, we must question whether or not DRC is a "health facility" within the meaning of the regulation. To be a "health facility" for the purposes of the prescription medicines exemption, the facility must, among other things, admit patients for stays of no less than twenty-four hours. (Reg. 1591(g).) Your letter gives the impression that DRC treats its patients on an out-patient basis. If that is the case, any sales that it makes are not covered by the exemption.

Be that as it may, we disagree that the items listed in your letter are medicines within the meaning of the regulation. To be eligible for the prescription medicines exemption, an item of tangible personal property must not only be sold or furnished in one of the ways listed in Regulation 1591(a), it must first be a "medicine" as defined in the regulation. We have previously determined

that items used for diagnostic or testing purposes are, in general, “appliances” or “devices” excluded from the definition of “medicines” under Regulation 1591(c)(2). While any glucose solution* either taken by or applied to the patient to determine glucose tolerance is a medicine, as noted in the pamphlet, the testing and diagnostic equipment and supplies are not. Therefore, tax applies to DRC’s sales to Diagnostic Glucose Test equipment and test supplies except for the glucose itself and any substance or preparation used to cleanse the patient’s skin prior to performing tests.

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
4031I
Enclosure: Regulation 1591

<p>*But see changes to Reg. 1591.1(b)(5), ¶2. SPJ 3/15/02</p>
