

**STATE BOARD OF EQUALIZATION**

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

May 28, 1992

Ms. K--- K---
XXXX --- Road
P.O. Box XXXXX
---, VI XXXXX-XXXX

Re: EF -- XX-XXXXXX
Sales of Medical Supplies

Dear Ms K---:

I am responding to your letter to me of March 27, 1992. You asked for advice regarding the sales and use tax status of specific medical items, following up on my letter to you of March 17, 1992, a copy of which you attached to your letter.

OPINION

In my letter I discussed the principles governing the exemption from sales and use tax for the sales of medical items as provided in Revenue and Taxation Code Section 6369, interpreted and implemented by Regulation 1591. For the sake of brevity, I will not repeat that discussion here. Our opinion regarding the status of the individual products at issue is as follows:

- (1) Wrist and Forearm Splint, Finger Splint, Finger Immobilizer.

Although, as I noted in my letter, splints are excluded from the definition of "medicines" under Regulation 1591(c)(2), certain kinds of splints – which act as a support of brace for the body structure and not simply immobilize bones to allow a fracture to heal are considered orthotic devices the sale of which are exempt from tax under Regulation 1591(b)(4). We have previously considered that the splint which you describe operates to immobilize joints and support the bones while they heal. Indeed, the description of the Finger Protector states that it immobilizes injured fingers. Sales of such products are exempt from tax.

(2) Cast Sandals and Post-Op Shoes.

Regulation 1591(b)(4) excludes orthopedic shoes or supportive devices for the foot from the definition of "orthotic devices" unless "they are an integral part of a leg brace or artificial foot or 'custom-made biomechanical foot orthoses.'" We have previously concluded that cast shoes and post-operative shoes are not part of a leg brace or artificial foot and so do not qualify for the exemption. The cast sandal is also not part of leg brace and so does not qualify. Sales of these items are subject to tax.

(3) PVP Iodine Prep Solution and Scrub Solution, Acu-dyne Ointment, Eucerin Skin Lotion, Cream Skin Care.

Products used for cleansing, and otherwise caring for the skin of patients protecting, and otherwise treating skin disorders or preventing adverse skin conditions have long been considered to be "medicines." Sales of the listed items are exempt from tax.

(4) Vaseline Lotion. You listed this product, but the attachments did not describe its use. See discussion under Item (3).

(5) E-Z Scrubbrush w/Hibiclens and Scrubbrush w/Iodophar.

Sales of cleansers used by physicians to scrub up prior surgery are exempt from tax pursuant to the court's decision in Purdue Frederick Co. v. S.B.E. (1990) 218 Cal.App.3d 1021. The description is unclear if the brushes are sold impregnated with the cleanser or not. Brushes sold separately are not exempt from tax, but if they are sold impregnated with a preparation recognized as a medicine, they do qualify for the exemption in which case their sales would be exempt from tax.

(6) Insulin Syringes.

Sales of such items are exempt only when furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician under Regulation 1591(h). Sales to hospitals for use on patients while in the hospital do not qualify; such sales are taxable.

(7) Immobilizers. As noted above, such items immobilize joints and support the bones while they heal. They are to be distinguished from items which merely hold in place the pieces resulting from a bone fracture and permit them to properly knit together. Sales of the latter items are subject to tax.

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

JWL:es