

Memorandum

425.0292.500

To : Mr. Vic Anderson
Supv., Aud. Eval. & Plan Sect. (MIC:40)

Date: August 18, 1997

From : John L. Waid
Senior Tax Counsel

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Subject: SR -- XX-XXXXXX
The N--- S---
Cranial Prostheses and Accessories

I am responding to your memorandum to Assistant Chief Counsel Gary J. Jugum dated July 9, 1997. You attached to your memorandum a copy of a letter dated June 10, 1997, from Dr. G--- E. T--- to Ms. Karen Hughes of your section, requesting an opinion on the application of sales tax to N--- S---'s sales of head coverings, including hats, caps, turbans, sleep caps and wig liners. Although Dr. T--- writes as a member of the L--- O--- W--- Medical Group, the file indicates that he is the President of the taxpayer. The file also indicates that N--- S--- is operated under the aegis of the [L--- O---] W--- Medical Group; the exact relationship is not evident. The letter is written on N--- S---'s letterhead.

You also attached to your memorandum Ms. Hughes' draft response. She opined that head coverings, along with wigs, bangs, and hoops of hair would be included as prostheses under Regulation 1591(b)(5), the sales of which under Regulation 1591(a) would not be subject to tax. She cited Annotation 425.0397 (4/27/90) as authority. We do not agree.

Under the regulation, a prosthetic device must assist or replace a natural part of the body. We said in the letter supporting the annotation that, under the strictly-defined circumstances stated therein, a wig can do that. On the other hand, a hat does not assist or replace a natural part of the body. It is a hat. It covers the head. Wearing apparel is not listed in the regulation among the items deemed to be "medicines" nor does it even qualify as "related supplies." Its purposes are generally cosmetic, or fashion, or to supply protection for the head in addition to that supplied by hair. We thus conclude that hats and caps, etc., do not qualify as medicines under the regulation. As a result, their sales are subject to tax.

JLW:sr