



**STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)**

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

MEMBER
First District

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

March 28, 1994

BURTON W. OLIVER
Executive Director

Ms. D--- B---
T--- H--- G---
XXXX --- ---, Suite XXX
--- --- ---, California XXXXX

Re: [No Permit Number]
Pre-filled Nebulizers

Dear Ms. B---:

I am answering your letter to me of February 2, 1994. You ask if sales to hospitals of pre-filled nebulizers are exempt from tax.

You describe "prefilled nebulizers" as follows:

"A prefilled nebulizer is a disposable, single patient item that must be prescribed by a physician.

"They are prescribed as an inhalant to be mixed with oxygen for patients with chronic respiratory diseases such as asthma or cystic fibrosis."

OPINION

In previous correspondence with you, I have discussed the principles governing the exemption for sales of prescription medicines. As you remember, under Regulation 1591(c)(2), items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines.

We have previously concluded that nebulizers are appliances, device, etc., excluded from the definition of “medicines” under this sub-division. Neither do they qualify as “medical oxygen delivery systems” under Regulation 1591(m).

You indicate, however, that this nebulizer comes pre-filled with an inhalant. We are of the opinion that this inhalant comes under the definition of a “medicine” contained in Regulation 1591(b)(1) because it is a substance intended for use by internal application to the human body to treat respiratory diseases.

Regulation 1589(b)(1)(C) provides that tax does not apply to the sales of containers when sold with the contents, if the sales price of the contents is not required to be included in the measure of the sales tax or use tax. We have previously found in similar cases that, although the item is used to inject medicine into the patient, because it is prefilled and may only be used on one patient and then be thrown away, the item is not separate or reusable administration equipment. Therefore, we conclude that the prefilled nebulizer is a “container” the sales of which are exempt from tax under this authority because the sales price of the contents, a medicine, is not required to be included in the measure of 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

JLW:es