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**STATE BOARD OF EQUALIZATION**

916-445-2705

November 24, 1976

Dear Mr. X-----,

In your letter of November 15, you questioned the distinction in the application of tax to pill containers which a hospital pharmacy fills and sells to out-patients and similar containers which the pharmacy fills for patients in the hospital.

We have made the distinction referred to by the local office.

In the sale of the medicine to out-patients, the prescription medicine is placed in the containers, and the whole is transferred to the out-patient, which is thereafter vested with complete possession and control. That sale of medicine is exempted by Revenue and Taxation Code Section 6369 and sale of the containers is exempted by Revenue and Taxation Code 6364.

On the other hand, ordinary in-patient hospital practice does not result in such a transfer. The prescription is issued by the pharmacy to the ward. In ordinary practice, the medical and nursing staff asserts and exercise complete control. As a consequence, we regard the container as being used in the hospital operations similar to other hospital personnel operated medication dispensing equipment. When the medicine is sold to the patient, it is sold by the dose.

In illustration, the sale of the medicine to the out-patient occurs at the time the bottle of medicine is handed to the patient at the pharmacy. The sale of the medicine to the in-patient does not occur at the time the pharmacy delivers the bottle of medicine to the nursing staff. The sale of medicine to the in-patient, under the circumstances described in Regulation 1503, takes place at the time the nursing staff administers each individual the dose of medicine to the in-patient.

In some instances, medicine administered to an in-patient will not be exhausted upon that patient's discharge and at the attending physician's direction, the patient will be supplied with the remaining prescription in the small container.

That amount of medicine and the container will be regarded as sold and the gross receipts although the sale of the medicine need not be included in the measure of gross receipts. However, the container has still be "used" by the hospital previously, so that the hospital

may not claim a tax-paid purchases resold deduction on medicine containers so used in the ward, and later sold rather than discarded by the hospital.

Very truly yours,

Phillip R. Dougherty  
Tax Counsel