



STATE BOARD OF EQUALIZATION

February 26, 1964

Dear Mr. X-----

This is in furtherance of our telephone conversation of yesterday concerning the questions raised in your letter of January 27, 1964. Concerning the four points raised in your letter, we submit the following comments:

1. Insofar as your sales and use tax liability is concerned, Ruling 22 controls regardless of the nature of the license that you may hold from the State Pharmacy Board. Your sales to physicians and hospitals are retail sales as defined in the Sales and Use Tax Law and are, thus, subject to Ruling 22 except in those relatively few cases in which a physician or a hospital may furnish you with a valid resale certificate.
2. Your understanding is correct that your sales to physicians or hospitals are exempt to the extent explained in Ruling 22.
3. Rubbing alcohol qualifies as a "medicine" under Ruling 22 and the sale thereof is subject to the exemption under the conditions explained in the ruling. We have taken the position that such items as bone plates or screws which become a permanent implant in the body are considered "medicines", but any prosthetic device or appliance is specifically excluded by paragraph (c) (1) of the ruling.
4. We have taken the position that sutures inserted into and remaining in the body or dissolving in the body are included within the term "medicines", but that those that are removed from the body, such as the type used to close skin cuts, are not included. You point to a difficulty in determining those transactions which are subject to the tax and which are not so subject because of the wide variety of sutures which you sell. If the sutures are of a type that you know are to remain in the body or be dissolved in the body, you may treat them as exempt medicines. On the other hand, if you know that they are of the type to be removed, you should treat them as taxable items and pay the tax, unless you receive a valid resale certificate from the holder of a seller's permit. Where you cannot ascertain the use to be made of the item, it would be appropriate for you to ask, in lieu of reimbursement for the tax, for an exemption certificate if the purchaser, in fact, claims that they will be used in an exempt manner.

No special form of exemption certificate is prescribed. They are provided for by Section 6421 of the Sales and Use Tax Law, copy enclosed.

Another possibility would be that you might establish over a representative period of time a percentage factor to be applied to those sales of sutures some of which will be used in a manner subjecting the sale to tax and some of which will be otherwise used. This is somewhat of an auditing problem which you might wish later to take up with our district office audit staff.

Very truly yours,

E. H. Stetson
Tax Counsel

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