



STATE BOARD OF EQUALIZATION

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July 15, 1994

BURTON W. OLIVER
Executive Director

X-----

Re: X-----
Speech Pathology Devices

Dear X-----,

I am responding to your letter to the Legal Division dated May 18, 1994. You ask if the speech pathologists who are your company's customers must obtain seller's permits to dispense the device your company makes and sells.

You indicate that your company manufactures a speech device which assists stutterers to speak more fluently. The device must be professionally fit by a speech pathologist who marks up the cost of the instrument. You indicate that you spoke to someone at the "state department" (presumably a Board office), who indicated that this situation was similar to sales to hearing aid dispensers in that the sale to the purchasing pathologist was a taxable retail sale so that the pathologist's sale to his patient was not subject to tax. The pathologist, then, would not be required to possess a seller's permit.

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) Section 6369, interpreted and implemented by Title 28, California Code of Regulations, Regulation 1591, provides that sales of medicine, when prescribed and sold or furnished under certain conditions for the treatment of a human being, are exempt from sales or use tax. (Reg. 1591(a).) Subdivision (b) (1) defines "medicine" to "mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and which is commonly recognized as a substance or preparation intended for such use." However, Regulation 1591(c) (2) adds that "medicines" do not include "articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments,

apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof." (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) As a rule, then, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines.

C. Tax Consequences.

We have previously determined that speech aids are appliances or devices excluded from the definition of "medicines" under Regulation 1591(c) (2). No statute designates a speech pathologist as a statutory consumer. Therefore, the understanding of the person with whom you spoke is incorrect. Speech pathologists' sales of such speech aids are subject to tax, and they are required to possess seller's permits in California. Your company may sell the devices free of tax by timely accepting from its buyers resale certificates substantially conforming to the requirements of Regulation 1668.

For your information, I have included copies of Regulations 1591 and 1668. 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

Encs: Regs. 1591, 1668

Cc: OH – District Administrator