STATE BOARD OF EQUALIZATION
(916) 445-2641

November 30, 1976

Mr. R--- J. F---
Director
--- and ---
XXX --- ---
--- ---, California XXXXX

Dear Mr. F---:

This is in response to your letters of August 10 and November 10, 1976. We apologize for our excessive delay in responding to your inquiry.

First, we are in agreement with you that tax would not apply to an artificial sphincter permanently implanted in victims suffering from partial or total paralysis to aid them in regaining normalized bowel movements. The device would qualify as a medicine pursuant to Regulation 1591 paragraph (b)(2).

Second, you inquire as to the taxability of a diaphragm pacing system. The diaphragm pacing system is implanted in patients requiring external assistance in regulating the breathing function. The system consists of a transmitter, antennae, wiring, and electrodes and is purchased as a system, ie., one part is meaningless without its counterparts. The electrodes and wires and patient-based antenna are implanted while the transmitter is not implanted. The cost of the components is equally distributed between the implantable and nonimplantable items.

We have previously taken the position with respect to pacemaker systems that tax applies to the sale of external components but tax does not apply to the sale of implanted items. If the items are sold for a lump sum, then tax applies to the entire charge. If the price of the system is separated between taxable and nontaxable items, tax is applicable only on the price charged for the taxable items.

Third , you raise several inquiries with respect to the taxability of radium for therapy.

We understand that small radioactive pellets are implanted under the skin in cancer patients for short periods of time. Their use is strictly administered by a doctor. Due to their extreme cost, radium pellets are customarily leased, rather than purchased, and reused following sterilization after each use.

The fact that the property is leased does not affect its potential exemption. Assuming that the lease charge to the patient would otherwise be subject to tax, the tax will not apply because of the exemption provided by Revenue and Taxation Code Section 6369. We have previously classified radiopaques as medicines. We think that radioactive pellets qualify as medicines and that they are not excluded by any of the provisions of paragraphs (c)(1) or (c)(2) of Regulation 1591.

With respect to lease transactions, the application of the tax is somewhat complicated. See our Regulation 1660 "Leases of Tangible Personal Property—In General." We understand that the vendor is located out of state. If the vendor (owner/lessor) leases the pellets directly to the patient, the tax will not apply.

Fourth, we remain of the opinion as stated ion our letter of December 5, 1974, that porcine grafts do not qualify as medicines under Regulation 1591. While the matter is not free from doubt, we are of the opinion that zenoplastic skin does not qualify as a medicine under paragraph (b)(1) of the regulation or under paragraph (b)(2). In our letter to you of December 5, 1974, we stated that it appears that porcine cutaneous grafts are used only as temporary biological dressings. These items would thus not qualify as medicines under paragraph (b)(2) because they do not "remain or dissolve in the body." We are further of the opinion that there is insufficient basis for classifying them as commonly regarded "medicines" under paragraph (b)(1).

Very truly yours,

Gary J. Jugum
Tax Counsel