

M e m o r a n d u m**425.1150**

To: Mr. Steve Guest
Return Review Section – MIC:35

Date: April 24, 1995

From: John L. Waid
Tax Counsel

Subject: X-----
Pre-filled Syringes

By memorandum dated February 21, 1995, you asked the Legal Division to reply to the taxpayer's letter dated December 1, 1994, to the Sales and Use Tax Department regarding the application of sales tax to the X----- saline and Heparin Flush syringes which it will sell in California. I am writing you because the taxpayer did not furnish sufficient information for me to render a definite opinion.

The taxpayer attached to its letter a copy of (apparently) a flyer from its vendor which pictures the various syringes at issue and includes some general product information. It does not, however, describe how these products are used. In its letter, however, it terms them "prefill cartridges," and the flyer calls them "One system. One Source. One Solution." This indicates that they come pre-filled and are for one-time use only.

OPINION

As a rule, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines. Under Regulation 1591 (c) (2), syringes are considered appliances, devices, etc., excluded from the definition of "medicines" with the result that their sales are subject to tax. (Annot. 425.0462.) We have, however, determined that when the syringe is sold pre-filled with a medicine, is disposable and for one-time use only, then the pre-filled syringe is considered to be a container sold filled with exempt contents the sales of which are exempt from tax under Regulation 1589 (b) (1) (C) . The taxpayer's letter does not give any information on this issue but, as noted above, it indicates that such may be the case. If that is so, then the sales of these syringes are exempt from tax under the above authority. More information should be obtained on the nature of these syringes before we give a definite opinion.

JLW:sr