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November 16, 1994

Ms. K--- K---
G--- M--- C---
XXXX --- ---
P.O. Box XXXXX
---, Virginia XXXXX-XXXX

Re: SZ OH XX-XXXXXX
Sales Tax on Medical Supplies

Dear Ms. K---:

I am responding to your latest letter to me dated October 5, 1994. You asked if sales or use tax applies to the sales by your company ("G---") of certain medical items. You attached to your letter copies of presumably pages from a supply catalogue.

OPINION

In our previous correspondence I have discussed the legal principles governing the prescription medicines exemption from sales and use tax provided by Revenue and Taxation Code Section 6369, interpreted and implemented by Regulation 1591, and so for the sake of brevity will not repeat it here. (Unless otherwise stated, all further statutory citations are to the Revenue and Taxation Code.) Please remember that, as a rule, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines. (Reg. 1591(c)(2).)

Based on the above standard, we conclude as to the items at issue as follows:

1. Microfoam Surgical Tape. You indicate that this product is "tape utilized to hold dressings in place during the surgery." The catalogue says it is for "pressure dressings." "Dressings" are specifically listed in Regulation 1591(c)(2) as being "devices" excluded from the definition of "medicine." Sales of this item are subject to tax.

2. Soap. You ask if sales of soaps are exempt from tax. As you know, we have previously determined that medicated soaps when applied to the skin of the patient for treatment of the patient are considered “medicines” under Regulation 1591(b)(1). (Annot. 425.0700.) You ask if over-the-counter soaps such as Ivory and Dial are considered medicines also. The regulation not only requires that the item be a “substance or preparation intended for use by external or internal application in the diagnosis, cure, mitigation, treatment or prevention of disease,” but also that it be “commonly recognized as a substance or preparation intended for that use.” Over-the-counter soaps such as Dial or Ivory are sold for general household and cosmetic use and cannot be said to be commonly recognized as medicines. (See, e.g., Annot. 425.0820.) Such soaps do not qualify as medicines under the regulation with the result that their sales are subject to tax. We note that sales of medicated soaps over-the-counter or for non-exempt purposes are also subject to tax.
3. Wound Dressing and Wound Packing. You state that this type of item “is utilized on serious, open wounds and although it is not medicated, it is made of material that actually speeds up the healing process which generates new cells to develop. It also helps keep the wound moisturized which promotes accelerated healing.” Again, “dressings” are specifically excluded from the definition of “medicine” under Regulation 1591(c)(2), with the result that sales of such items are subject to tax.
4. Testicular Gel Implants. “This is silicon implants put into the testicles when replacement is necessary due to disease (ex. cancer).” We have previously determined that such implants are medicines under Regulation 1591(b)(2).
5. Condoms. We have previously determined that these items are “appliances, devices, etc.” excluded from the definition of “medicine” under Regulation 1591(c)(2), with the result that sales of such items are subject to tax.
6. Robinson Urethral Catheter. As you noted, we have previously held that Robinson catheters are not medicines but that urethral catheters are. You attach copies of a portion of Senior Tax Counsel Mary C. Armstrong's letter dated October 2, 1989, showing this conclusion and of a catalogue page showing the Robinson catheter but do not include a description of the operation of the product. I am therefore unable to give you a definitive opinion on this subject and can only assume that we have previously found that the Robinson catheter is not permanently implanted, used for drainage through a natural or artificial opening in the body, or is a supply related to an exempt item. (See, Annot. 425.0230.)
7. Feeding Tubes. See response to #5.

8. Feeding Bags and Anti-Reflux Valves. See response to #5.

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

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cc: OH - District Administrator