



STATE BOARD OF EQUALIZATION

June 24, 1975

Mr. W--- B. M---
Tax Counsel
B--- L---, Inc.
--- ---, IL XXXXX

Dear Mr. M---

RE: B--- L---, Inc.
T--- L---, Inc.
S- --- XXX XXXXXXX
S- -- XX XXXXXXX
S- -- XX XXXXXXX

We have completed our review regarding the issue raised at our conference of May 30, i.e., whether certain equipment used in the collection of blood or components of blood is in the class of a nonreturnable container, the sale or use of which is exempt.

We understand that your company sells so-called single and multiple blood pack units to blood banks which use them in collecting blood from human donors. Each unit consists of one or more plastic bags, plastic tubing, and a needle, all of which form an integral, interconnected package. One of the bags contains anticoagulants. In the case of the single pack, the blood is collected in the bag and is sold by the blood bank together with the bag and the tubing, usually to a hospital. The tubing contains portions of the blood for use in cross-matching. In the case of the multiple pack, the blood is collected in one bag and is centrifuged so that its components such as plasma, red cells, and platelets are separated into the various bags. Those components are then sold by the blood banks together with the bags and tubing in which they are contained.

Distinguished from the above described process of blood collection is the process of plasmapheresis, through which plasma or platelets are retained and the red cells are returned to the donor. This process is performed by plasmapheresis centers and the equipment is sold by your company to those centers. The equipment includes one or two plastic bags, with tubing, in which the blood is collected. There is also a separate plastic bag of saline solution and, in addition, so-called recipient sets, which consist of tubes, clamps, and filters and are used to allow saline solution and red cells to flow to the donor. Finally, there are plastic bags into which the plasma or platelets are separated. After the blood is collected in the plastic bag or bags, the blood in the bags

is then separated into the desired components, and thereafter the red blood cells left in the original bags are allowed to flow back to the donor. The plasma or platelets are then sold by the plasmapheresis centers together with the bags and tubing into which they were separated.

It is our contention that sales by your company of those plastic bags and tubing that are sold by the blood banks together with the blood or blood components that they contain, are exempt under Section 6364 of the Revenue and Taxation Code as sales of nonreturnable containers to persons who place the contents in the containers and sell the contents together with the container. The use by the blood banks of those bags is exempt under the same section since that use does not extend beyond that reasonably necessary to place the blood or blood components in the containers. The sale and use of the needles sold by your company to the blood banks as part of a blood pack unit qualifying for exemption as a nonreturnable container as described above, will also be regarded as exempt. No exemption applies with respect to other items, including bags and tubing, that are not sold by the blood banks together with the blood or blood components.

Those plastic bags and tubing that are sold by plasmapheresis centers together with the plasma or platelets that they contain are also nonreturnable containers. The sale of those bags and tubing to, and the use of them by, the centers, are exempt. No exemption applies with respect to those bags and other materials used by the centers in the collection of plasma or platelets other than the bags and tubing in which those components are sold. If in any case a center purchases a multiple blood pack unit and sells some of the bags in the unit as containers of the plasma or platelets and merely uses other bags in the unit, tax will apply to an allocable portion of the purchase price.

The conclusions stated in this letter supersede all prior conclusions or opinions by this office on the same subject.

Very truly yours,

T. P. Putnam
Assistant Chief Counsel

TPP:lb



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October 30, 1989

Ms. M--- D---
---, --- & ---, Inc. [D]
XXXX --- ---, Suite XXX
---, California XXXXX

S- -- XX-XXXXXX

Dear Ms. D---:

Your letter of August 24, 1989 to Senior Tax Auditor Gary Wolferman of our Chicago Office has been referred to the legal staff for reply. As we understand it, you are presently undergoing an audit. You wish to know whether the needles, bags, tubing, bowls, grommets and cartons furnished by M--- to its own and contract plasmapheresis centers are exempt from tax.

The following is a discussion of the facts:

“In 1983, M--- Inc. consolidated with C--- L--- of [city], California. Among other things, C--- L--- division manufactures pharmaceutical products from blood plasma. Plasma is supplied to M--- Inc. by plasmapheresis centers located throughout the United States. Some of these centers are owned by M--- Inc. and some are ‘contract centers’ owned by someone other than M--- Inc. In California from January 1983 through June 1987, M--- Inc. owned all the plasmapheresis centers except one. In July 1987, an additional contract center was opened for a total of seven plasmapheresis centers in California.

“M--- Inc. currently operates a plasma processing facility in [city], North Carolina. Prior to January of 1988, a second smaller processing facility was located in [city 1], California. During 1988 no plasma was fractionated at the [city 1] location. Additionally, M--- Inc. has no plans at this time to fractionate plasma at [city 1] again.

“M--- manufactures needles, bags, tubing and filters in their [city 2] location. Needles, bowls and grommets are purchased by M--- to be assembled to complete the blood collection unit. M--- supplies two types of blood collection units: (1) the manual system which consists of a needle, multiple bags, a bag containing a saline solution, tubing, filters, grommets and a pooling bag and (2) the automated system which consists of a needle, a bag of citrate (anticoagulant), tubing, a plastic bowl containing a stainless steel centrifuge and a pooling bag.... Both of these systems form a separate type of blood collection unit. Carton and carton dividers are purchased by M--- Inc. and are used to ship the pooling bags containing plasma to [city], North Carolina.

“After manufacture and assembly of the blood collection units, the majority of these units are provided to plasmapheresis centers for the collection of plasma for M---. M--- has agreed to furnish the blood collection units to the centers without charge. M--- has further agreed to pay any state or local taxes arising out of the use of the blood collection equipment.

“After the collection, plasma is sold and shipped in the pooling bags back to M---’ processing facility in [city], North Carolina. With the onset of certain blood diseases, enhanced safety measures require all of the blood collection equipment be disposed of in a medically accepted manner. There can be no reuse or recycling of this equipment or material.

“The plasmapheresis centers use the blood collection units to obtain whole blood from the donor. In the manual system the whole blood is collected in a blood bag. The full blood bag is disconnected from the donor and taken to a centrifuge. The whole blood is centrifuged and the plasma rises to the top of the blood bag from which it is expressed into a pooling bag containing a small amount of sodium citrate (anticoagulant). The remaining red blood cells which coagulate quickly must be “thinned” with saline in order to be returned to the donor. This entire process takes about 45 minutes.

“The automated system was developed as a result of changes in medical technology. The automated system uses plastic bowls each containing a centrifuge which separates the plasma from the whole blood. The bowl sits in a recessed area of a machine which spins the bowl, monitors blood flow, checks for the presence of air or obstruction in the tubing and monitors donor’s vital signs. The plasma is spun off to the pooling bag containing citrate. When the bowl fills with red blood cells, the machine stops the centrifuge. A small amount of citrate is added to the red blood cells and the machine then reverses the flow and returns the red blood cells to the donor. This process takes about 10 minutes. When the programmed weight of plasma has been collected in the pooling bag or the donor’s vital signs deviate from normal limits, the machine shuts off automatically and signals the attendant.

“The pooling bag containing the plasma is frozen. It is then placed in a carton and shipped to [city], North Carolina for fractionation of the plasma into its components for use in pharmaceuticals, among them albumin, clotting factors and several immune globulins.”

It is the position of M--- Inc. that neither California sales tax nor California use tax is applicable to the blood collection units. You are of the opinion that Annotation 195.0080 was inadvertently overlooked when considering the taxability of the blood collection units in prior audits.

In Business Taxes Law Guide Annotation 195.0080 we concluded that the sale of bags, tubing and needles to blood banks and plasmapheresis centers were sales of nonreturnable containers, therefore the sale to and the use by the centers was also exempt from tax. However, it was noted that:

“...no exemption applies with respect to other items, including bags and tubing that are not sold by the blood banks together with the blood or blood components.”

If all the items in the blood collection kits furnished by M--- are returned to M---, no tax is due since the items would be considered part of a nonreturnable container pursuant to Revenue and Taxation Code section 6364. We understand, however, from your description, that the bags, tubing, needles, clamps and filters used in the blood collection process are disposed of by the centers. The only items returned to M--- are the pooling bags and the carton and carton dividers used to ship the frozen plasma.

We are of the opinion that to the extent the pooling bag is the only item returned to M---, it is the only item exempt from tax. We are unable to determine whether the carton and carton dividers are returnable or nonreturnable containers because it is unclear whether they are reused.

If you have further questions regarding this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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