



## STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082  
 916-323-3092 • FAX 916-323-3387  
 www.boe.ca.gov

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 Interim Executive Director

August 11, 2011

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Partner

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**Re: Tax Opinion Request  
 Unidentified Taxpayer**

Dear ---:

This letter is in response to --- November 15, 2010, email to Bill Insalaco of the Board's Audit Determination and Refund Section as explained in further detail in your March 4, 2011, letter in which you request information as to the application of the Sales and Use Tax Law to an unnamed taxpayer's business. In your March 4, 2011, letter, you state, in relevant part:

As you know, California provides a sales and use tax exemption for sales or purchases of "any container used to collect or store human whole blood, plasma, blood products or blood derivatives" (hereinafter, "blood container").  
 Cal. Rev. & Tax Code §6364.5(a) (2010).

Our Issue is this: what qualifies as a "blood container" under section 6364.5?

[¶] . . . [¶]

[You ask whether transactions involving the sale of the following groups of items are exempt under Revenue and Taxation Code section 6364.5:]

1. **Blood Bag:** A bag used in general laboratory and medical practice to hold blood specimens and samples.
2. **Blood Collection or Storage Plate:** An object with a flat bottom on which blood is collected and stored, generally to be tested or examined.
3. **Blood Collection or Storage Tube:** A cylindrical container, usually with one closed end. The tube is used to collect and store human blood. The tube may be purchased pre-filled with reagent which mixes with blood during testing. Tube covers, caps, and stoppers may be purchased separately or with the tube. The covers, caps, and stoppers are classified as blood collection or storage tubes because they are integral to the tube's storage function.

4. **Swab and Inoculation Loop:** A stick with a loop or cotton on the end that is used to collect and transfer a small blood sample. It is also used to smear or streak a sample.
5. **Machine that directly Collects or Stores Blood:** A machine in which blood is placed to be tested, stored, transferred, or measured. The machine itself is a container and is not used in conjunction with a separate or removable item that contains the blood.

As an exhibit attached to your letter, you provided a list and description of various subcategories that fall into each of the categories you have described above. It states:

### 1. Blood Bag

- a. **Blood Bag:** A bag used in general laboratory and medical practice to hold specimens and samples.

### 2. Blood Collection or Storage Plate

- a. **Microscope Slide:** A rectangular piece of glass onto which blood is placed for examination under a microscope or for projection onto a larger screen.
- b. **Microscope Slide Cover:** A small square of glass placed on top of a slide sample. The cover prevents the sample from moving, changing, or mixing with other substances. Where used, this part is integral to the storage function of a microscope slide.
- c. **Reservoir:** A short container with a flat bottom and walls which can be used to hold blood for storage, transportation, or testing.
- d. **Test Card:** A hard or soft card made of paper or plastic. Blood is placed on the card and absorbed or placed in the card's well and mixed with a reagent during testing.
- e. **Well Plate:** A flat tray with multiple wells into which blood is placed for testing, holding, and assays. It is often used in mechanical testing environments where a machine pipettes test materials into the wells.
- f. **Well Plate or Reservoir Cover:** A film or seal used to prevent a sample from dissipating or spilling. Where used, this part is integral to the storage function of a well plate or reservoir.

### 3. Blood Collection or Storage Tube

- a. **Beaker:** A lipped cylindrical glass container which can be used to hold samples of blood.

- b. Filter System:** A system with a porous device (filter) for removing impurities or solid particles from a liquid or gas sample passed through it. This includes, but is not limited to, the containers that may be attached to the filter and used to hold the sample before and after filtration.
- c. Flask:** A narrow-necked container, typically conical or spherical, used in laboratories to store blood samples.
- d. Graduated Cylinder:** An open cylinder with a flat, enclosed bottom and measuring marks on its walls. It is used to measure fluid samples.
- e. Needle:** An item punctured into a person's vein and used to collect blood.
- f. Pipette:** A device used to transfer and measure blood. It typically consists of a narrow tube and a bulb. Blood is drawn into the shaft and retained there by suction created when the bulb is deflated and released. The fluid is drawn into the shaft for dispensing or measurement. It can also be an open ended tube that is attached to a device which creates suction.
- g. Pipette Aid:** A device into which a pipette or pipette tip is placed. It is used to draw fluids into a pipette that is attached to it.
- h. Pipette Tip:** A small, one-time use tube which is placed on the end of a pipette aid, pipetter or similar device. It is used to collect, measure and/or dispense a sample of blood or other material.
- i. Pipetter:** Similar to a pipette aid, a pipette is a device which uses pipette tips to draw in blood or other fluid samples.
- j. Shipping:** Tubes used to hold blood for shipment.
- k. Tube:** A narrow tube that typically has one open end and is used to hold samples of blood for testing and experiments. The tube may be purchased pre-filled with reagent and may come with a cap or stopper. The tube typically uses a stopper and is often evacuated to promote blood draw.
- l. Tube Cover/Cap/Stopper:** A piece placed on the open end of a tube to prevent the tube's contents from escaping. Where used, this part is integral to the storage function of a tube.

#### 4. Swab and Inoculation Loop

- a. Inoculation Loop:** A stick with a small loop on the end used to collect blood from a culture or transfer it to a culture. When transferred to the culture, the blood is smeared or streaked onto the culture.
- b. Swab:** A stick, generally with a cotton end, used to collect and transfer blood samples.

## 5. Machine that Directly Collects or Stores Blood

**a. Machine that Directly Collects or Stores Blood:** A machine in which blood is placed to be tested, stored, transferred, or measured. The machine itself is a container and is not used in conjunction with a separate or removable item that contains the blood. An example is the \_\_\_\_\_ Machine, which accepts small volumes of human blood for testing.

You additionally provided a list and description of various products that you state fall into each of the subcategories you have described above. As needed, I will refer to the specific products in response to your inquiry as to which of these items' sale or use qualifies for exemption from tax under Revenue and Taxation Code section 6364.5.

I initially note that Revenue and Taxation Code section (Section) 6596 sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when relying on a written response to a written request for advice from the Board. This opinion does not come within section 6596 because the identity of the specific person for whom the advice is requested was not disclosed in this request for written advice. (See Cal. Code Regs., tit. 18, § (Regulation or Reg.) 1705, subd. (b)(1).)

As a starting point, California imposes a sales tax measured by a retailer's gross receipts from the retail sale of tangible personal property inside this state, unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code, §§ 6051, 6091.) The sales tax is imposed on the retailer who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code, § 1656.1; Reg. 1700.) When sales tax does not apply, use tax is imposed, measured by the sales price of property purchased from a retailer for the storage, use, or other consumption of the property in California, unless specifically exempted or excluded from taxation by statute. (Rev. & Tax. Code, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (Rev. & Tax. Code, § 6202.) Taxable gross receipts or sales price includes all amounts received with respect to the sale, with no deduction for the cost of the materials, service, or expense of the retailer passed on to the purchaser, unless there is a specific statutory exclusion. (Rev. & Tax. Code, §§ 6011, 6012.)

Section 6364.5 exempts from tax transactions involving the sales and use of certain containers associated with blood collection. It states:

(a) There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, any container used to collect or store human whole blood, plasma, blood products, or blood derivatives that are exempt from taxation pursuant to Section 33, including, but not limited to, blood collection units and blood pack units.

(b) For purposes of this section, "blood collection units" and "blood pack units" include all items that form an integral, interconnected package that, when sold to plasmapheresis centers and blood banks, are used to collect blood or blood components, which are then sold together with the bags and tubing in which they are contained. Blood pack units consist of a plastic bag or bags, tubing, and a

needle. Blood collection units are either a manual system that includes a needle, multiple bags, a bag containing saline solution, tubing, filters, grommets, and a pooling bag or an automated system that consists of a needle, a bag of anticoagulant, tubing, a plastic bowl containing a stainless steel centrifuge and a pooling bag. Blood collection units and blood pack units also include plastic bags and tubing sold to plasmapheresis centers when those centers use them to collect blood plasma or platelets and then sell the plasma or platelets together with the bags and tubing in which they are contained.

When Section 6364.5 was added to the Sales and Use Tax Law,<sup>1</sup> the Board amended Regulation 1589, subdivision (b)(1)(E) by adding the following:

Operative April 1, 1998, tax does not apply to the sale or to the storage, use, or other consumption of any container used to collect or store human whole blood, plasma, blood products, or blood derivatives held for medical purposes, including, but not limited to, blood collection units and blood pack units.

Section 33 appears in the general section of the Revenue and Taxation Code prior to the start of the property tax sections (Rev. & Tax. Code, § 50 et seq.). It states:

Human whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, shall be exempt from taxation for any purpose.

Section 33's requirement that property be held in a bank for medical purposes applies only to human body parts and does not apply to human whole blood, plasma, blood products, or blood derivatives, even when the sale is made by an entity other than a licensed blood bank. (See, e.g. Sales and Use Tax Annotation<sup>2</sup> 495.0051 (6/18/2010).)

The uncodified portion of Assembly Bill 993 (Stats. 1997, Ch. 773), hereafter AB 993, the bill that created Section 6364.5, does state that “[e]xisting law provides that human whole blood, plasma, blood products, and blood derivatives held in a bank for medical use are exempt from taxation for any purpose in this state.” However, in examining the legislative history of AB 993, such language in the uncodified portion of the bill was not intended as a restriction when read together with Section 6364.5, subdivision (a)'s statement that the exemption applies to containers that store human whole blood, plasma, blood products, or blood derivatives (hereafter, collectively, “blood products”) “that are exempt from taxation pursuant to Section 33.” Thus, this language in Section 6364.5, subdivision (a), is not intended to limit the exemption to blood products held in a bank for medical use.

As discussed above, the exemption for sales of blood containers applies to sales of any container used to collect or store blood products that are exempt from taxation pursuant to Section 33, including, but not limited to, blood collection units and blood pack units. While the exemption is not limited to transactions involving the sale of blood collection units and blood

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<sup>1</sup> The operative date of Section 6364.5 was April 1, 1998.

<sup>2</sup> Annotations are summaries of the conclusions reached in selected opinions of attorneys of the Board's Legal Department and are intended to provide guidance regarding the interpretation of Board statutes and regulations as applied by staff to specific factual situations. (See Reg. 5700.)

pack units, it is limited to containers used to collect or store blood products. There is no definition of the phrase “collect or store” as it is used in this statute.

While the products whose sales are exempt from tax is not limited to the blood collection units and blood pack units as defined in subdivision (b) of Section 6364.5, these products demonstrate what type of product is a container that “collects or stores” blood products. Blood collection units and blood pack units, as defined, are units that form an integral, interconnected package that, when sold to plasmapheresis centers and blood banks, are used to collect blood products, which are then sold together with the bags and tubing in which they are contained. The units consist of blood bags, needles and tubing, among other things. Blood collection units and blood pack units also include plastic bags and tubing sold to plasmapheresis centers when those centers use them to collect blood plasma or platelets and then sell the plasma or platelets together with the bags and tubing in which they are contained.

The blood collection units and blood pack units include components that assist in performing the initial collection of blood products and other components that later store these blood products. Not only do the units collect the blood products, every type of unit includes a bag which stores the blood product prior to it being sold by the blood bank or plasmapheresis center. The bags in question are used exclusively for storing blood products. The blood product is sold together with the certain other integrated components of the unit by the blood bank or plasmapheresis center.

The legislative history of AB 993 provides further insight into what types of products the sales of which are intended to come within this exemption. The June 3, 1997, Assembly Floor Analysis indicates that the bill was intended to overturn a Board of Equalization decision that blood processing kits consisting of otherwise taxable tubing, needles, clamps, and filters sold together with otherwise exempt blood bags<sup>3</sup> for a lump sum price were taxable. According to this analysis, the sponsor’s office indicated that the existing law which had exempted blood bags as nonreturnable containers had not kept up with technological changes in blood processing, specifically the development of the assembled integrated blood collection units. Additionally, the fiscal effect of AB 993 was calculated using total sales and average costs of blood bags, platelet apheresis kits, plasma kits, and transfer bags. Each of these items includes a bag in which the blood product is stored. No other items besides these were included in the calculation of fiscal effect.

The legislative history of AB 993 demonstrates that the intent of Section 6364.5 was to provide a narrow exemption. The reference within the statute to containers that “collect or store” blood products refers to units such as blood collection units or blood pack units that include not only a bag, but also integrated components which collect the blood product stored in the bag and are not disposed of following this collection. As described in Section 6364.5, subdivision (b), when the blood products are sold by blood banks or plasmapheresis centers, certain other components are sold with the container and the blood product; the entire unit is considered a container. The language of the statute and the legislative history demonstrate that the exemption was not intended to apply to transactions involving the sale of syringes and pipettes which may collect blood or any item on which blood may be tested or temporarily held for other purposes. Based on the language of the statute and the legislative history, it is our conclusion that the

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<sup>3</sup> The sales of the blood bags in question would not be subject to tax as they were nonreturnable containers sold without their contents to persons who place the contents in the container and sell the contents together with the container. (See Reg. 1589, subd. (b)(1)(A).)

exemption provided by section 6364.5 applies to products analogous in function to the units described in Section 6364.5, subdivision (b) and those listed in the fiscal impact statement in the legislative history.

Your letter includes five categories of items that you describe as being involved in the “storage” of blood. I will address each of these categories separately.

### **Blood Bag**

This category is the only category that comes within the purview of Section 6364.5. The only subcategory is the blood bag subcategory. Because this subcategory comes within the purview of Section 6364.5, we will discuss the application of tax to transactions involving the sales of the specific items you have identified as part of this subcategory.

The first item is the . You state that it is a blood bag system that includes needle guards, tubing and platelet bags for blood component collection and storage. Furthermore, the bags are used to hold blood taken directly from human patients. This item is nearly identical to the blood collection and blood pack units described in subdivision (b) of Section 6364.5. Transactions involving the sale of this blood bag system are not subject to tax notwithstanding the fact that the sale may be made to an entity other than a licensed blood bank.

The second item in this category is a liquid tight specimen bag that you state is “used to hold a variety of liquid medical laboratory specimen” and “may be used for long-term and frozen storage.” It is our understanding that it is a zipper-lock bag designed to hold a variety of medical specimen. For example, it may be used to hold a urine sample or blood sample that is in a separate storage tube. It is not analogous to blood collection units and blood pack units or the blood bags and transfer bags discussed in the Assembly Floor Analysis. The sales or use of this item is not exempt from tax under Section 6364.5.

The third item in this category is a Seal Sample Bag. You describe this item as a blood bag; however, in viewing the description of these bags on the manufacturer’s web site ([www.fishersci.com](http://www.fishersci.com)), we note that the manufacturer advises that they are not suggested for use with liquids. The sales or use of this item is not exempt from tax under Section 6364.5.

The final item in this category is a bag holder. You describe this product as being for use with biohazardous waste. It is our understanding that the bag holder is a wire frame onto which a biohazardous disposal bag may be placed so that it remains open, similar to a trash receptacle. The products are intended to assist with the disposal of biohazardous waste. Neither the bag holder nor the disposal bag is analogous to blood collection units or blood pack units or the items discussed in the legislative history. The sales or use of these items are not exempt from tax under Section 6364.5.

### **Blood Collection or Storage Plate**

The “blood collection or storage plate” category includes slides and slide covers onto which blood products are placed for testing. Also within this category are test cards onto which blood is placed for testing, reservoirs which can hold blood for storage, transportation or testing, well plates into which blood is placed for testing, and reservoir or well plate covers. As discussed above, the sales of these types of items that hold blood for testing are not exempt from

tax under Section 6364.5. None of the items in this category are analogous to blood collection units or blood pack units or the items discussed in the legislative history. The sales or use of these items are not exempt from tax under Section 6364.5.

### **Blood Collection or Storage Tube**

The “blood collection or storage tube” category includes numerous subcategories. Included within this category are beakers, filter systems, flasks, graduated cylinders, needles, pipettes (and pipette aids, tips, and pipetter), shipping containers, tubes, and tube covers, caps and stoppers. The beakers, flasks, and graduated cylinders all may hold a variety of liquids. You describe the tubes as items that are used to hold blood for testing and experiments. The items in this category are not analogous to blood collection units or blood pack units or the items discussed in the legislative history. The sales or use of these items are not exempt from tax under Section 6364.5.

### **Swab and Inoculation Loop**

The category of “swab and inoculation loop” includes items you have described as sticks used to collect and transfer small blood samples. They are used to smear or streak a blood sample. Based on your description of these items, blood products may be placed on them temporarily to transfer them from one culture to another or to place samples onto a test card. These items are not analogous to blood collection units or blood pack units or the items discussed in the legislative history. The sales or use of these items are not exempt from tax under Section 6364.5.

### **Machine That Directly Collects or Stores Blood**

The category you have described as a “machine that directly collects or stores blood” is a spectrophotometer which you describe as a machine that tests a small volume of human blood and tests various aspects of the blood. This is a testing device and not a container that collects or stores blood products under Section 6364.5. As such, transactions involving its sale are not exempt from tax under Section 6364.5.

If you have any further questions, please write again.

Sincerely,

Cary Huxsoll  
Tax Counsel

CH/mcb

cc: Out-of-State District Administrator (OH)  
Mr. Jason Parker MIC:44  
Mr. Kevin Hanks MIC:49  
Ms. Susanne Buehler MIC:92