

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 455-6439

January 12, 1977

Mr. [K]

[A]

XXXXX --- ---, #XXX

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Dear Mr. [K]:

In your letter of December 24, 1976 to Mr. Brown, you asked our opinion as to the tax consequences regarding certain transactions entered into by a client of yours who is a dispensing optician. In addition to dispensing eyeglasses pursuant to a prescription to the public, he also transfers eyeglasses to physicians and optometrists, who in turn transfer them to their patients.

You asked whether or not both of these types of transactions fall under paragraph (b)(1) of Regulation 1592, and therefore make your client the consumer of such eyeglasses.

Section 6018 of the Revenue and Taxation Code provides: "A licensed optometrist, physician and surgeon or registered dispensing optician is a consumer of, and shall not be considered a retailer within the provisions of this part in the case of a licensed optometrist or physician and surgeon with respect to the ophthalmic materials used or furnished by him, in the performance of his professional services in the diagnosis, treatment or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof, or in the case of a registered dispensing optician with respect to the dispensing of ophthalmic materials." (Emphasis added.)

You will note it is only in the case when your client is acting as a dispensing optician, is he regarded as the consumer. Accordingly, our determination of whether or not your client is the consumer of the ophthalmic material he supplies depends on whether or not he is acting in the capacity of a dispensing optician when he transfers the materials.

In talking with a person in the Board of Medical Examiners, and reviewing Section 2550 of the Business and Professions Code, it is our opinion that your client is only acting in the capacity of a dispensing optician dispensing ophthalmic material when he dispenses eyeglasses directly to the persons who are to wear them. As such he is considered the consumer of the ophthalmic material.

In those cases in which he merely transfers eyeglasses to the optometrist or physician who in turn transfer them to their patients, he is not considered as "dispensing ophthalmic materials" within Section 6018. Under those circumstances, he is regarded as the retailer rather than the consumer of the eyeglasses and other ophthalmic material he supplies.

Very truly yours,

Glenn L. Rigby
Tax Counsel

GLR:po

cc: A. M. Brown
Principal Auditor