

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-0387

December 12, 1980

Mr. A--- K---
XXXX - XXth Street, Suite XXX
---, California XXXXX

Dear Mr. K---:

As we have discussed on December 5, 1980, herewith is a summary of our position on the sales and use tax implications of SB 1558, Chapter 1313, which supersedes AB 3040, Chapter 357, concerning acupuncturists and their related activities.

SB 1558, Chapter 1313, provides that, "An acupuncturist's certificate authorizes the holder therefor: (b) To... prescribe the use of...nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health". In addition, this law does not prohibit "any other persons" from prescribing the same kinds of drugless substances and herbs "so long as such activities are not...prescribed in connection with the practice of acupuncture".

We have discussed this matter with our legal staff who have advised us that the meaning of "prescribe" under this law does not fall within the context of the word "prescribe" pursuant to Section 4036* of the Business and Professions Code. Section 4036 of the Business and Professions Code provides that, "No person other than a physician, dentist, podiatrist, or veterinarian,...shall prescribe or write a prescription". Therefore, the provision of SB 1558 will not change the application of the sales tax to sales of herbs and drugless substances by acupuncturists.

Unless an acupuncturist is a person authorized under Section 4036 of the Business and Professions Code to prescribe or write a prescription, his sales of drugless substances and herbs are subject to sales tax and such persons must hold a seller's permit.

If an acupuncturist is an "authorized person", i.e., a licensed physician or other person specified in Section 4036, and prescribes drugless substances and herbs, which he furnishes to his patient for treatment, or which are dispensed on prescription filled by a registered pharmacist in

accordance with the law, such acupuncturist is not required to hold a seller's permit and the sales to the patient are exempt from tax.

Should you have any questions relevant to the above, please do not hesitate to contact me.

Very truly yours,

D. F. Brady
Principal Tax Auditor

DFB:j

* Section 4036 of the Business and Professions
Code is now section 4040.

Memorandum

425.0004

To: Mr. Glenn Bystrom

Date: May 14, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed D. F. Brady's memorandum of December 12, 1980 to Mr. A--- K---.

We are in agreement with his conclusion, as follows:

Acupuncturist. SB 1558, Chapter 1313, provides that, "An acupuncturist's certificate authorizes the holder thereof: (b) To... prescribe the use of...nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health". The meaning of "prescribe" under this law does not fall within the context of the word "prescribe" pursuant to Section 4036 of the Business and Professions Code. This section provides that, "No person other than a physician, dentist, podiatrist, or veterinarian,...shall prescribe or write a prescription". Therefore, the provision of SB 1558 will not change the application of the sales tax to sales of herbs and drugless substances by acupuncturists.

If an acupuncturist is a licensed physician or other person specified in Section 403 of the Business and Professions Code, and prescribes drugless substances and herbs, which he furnishes to his patient for treatment, or which are dispensed on prescription filled by a registered pharmacist in accordance with the law, such acupuncturist is not required to hold a seller's permit and the sales to the patient are exempt from tax. 12/12/80

Gary Jugum