

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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(916) 445-3237

September 29, 1980

Mr. R--- -, F---
--- and ---
XXXX --- Dr.
---, CA XXXXX

Dear Mr. F---:

This is in response to your letter of August 14, 1980. Your inquiry concerns the correct application of tax to the following items:

1. Feeding tubes: When patients are unable to eat normally or are only able to consume liquid nourishment, they are fed through a feeding tube on an intravenous administration kit consisting of tubing, connecting functions, arm supports, and special needles. All of the supplies are used once and discarded, however, due to the unique collection under which this type of nourishment is administered, the mealtime may be 24 hours a day.

You wish to know whether feeding tubes or intravenous administration kits or supplies used in feeding a patient who is unable to eat in a normal fashion, are considered disposable eating utensils when sold to patients of the hospital thus enabling the hospital to purchase such items ex-tax under a resale certificate.

We are of the opinion that when a patient is provided nutrients by means of a feeding tube or an intravenous administration kit that the patient will not be considered to have been fed what is customarily thought of as a meal. Accordingly, the disposable tubes and intravenous administration kits cannot be purchased for resale in the same manner hospitals purchase straws and napkins for service with traditional "meals."

We note however, if the substance fed the patient through the tube or intravenous set is a prescription item which qualifies as a "medicine" under Sales and Use Tax Regulation 1591, it would be exempt from tax. If the price of the container and the administration kit is de minimus (i.e., less than 10 percent) in relation to the cost of the entire unit consisting of the kit and the solution, it would be exempt from tax. If, however, the administration kit is sold separately, tax will apply to the kit.

2. It has been brought to your attention that some hospitals elect to use products not otherwise considered exempt in an exempt application. For example:

a. Foley Catheters: Although customarily these catheters are attached to anatomical openings in the human body to drain waste, they are sometimes used for post-operative insertion through an artificial opening to drain waste.

b. Arm supports: These are sometimes used as orthopedic supports in the nature of splints.

You wish to know whether the hospital should buy these supplies under an exemption certificate and accrue use tax based on a ratio representing the taxable use of these products?

The hospital may not purchase items under an exemption certificate which it knows will not be used in an exempt manner. An exemption certificate may be given by purchasers to sellers of tangible personal property when they can certify in writing to the seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempt from tax. (See Regulation 1667, "Exemption Certificates.") It would thus be proper for a hospital to use an exemption certificate for the purchase of items which will be exempt from tax under Revenue and Taxation Code Section 6369.

To the extent any items purchased under an exemption certificate are used in a manner so as to make them taxable, then the hospitals should pay tax on such items.

If, however, a separate charge is made for these items when they are sold by hospitals to patients, the items may be purchased under a resale certificate since they will be "resold" to patients.

If you have any further questions concerning this matter, please write this office.

Very truly yours,

Mary C. Armstrong
Staff Counsel

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