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November 30, 1993

X-----

Re: X-----

Dear X-----,

I am responding to your letter to Assistant Chief Counsel Gary J. Jugum dated October 14, 1993. You request a ruling on the application of sales and use tax to your company's sales of certain products. We note that the Board staff cannot issue tax rulings; only the Board itself may do that. However, we can give you our opinion regarding the correct application of tax to a given set of facts.

You indicate that X----- sells pulse oximeters and similar types of monitoring equipment as well as the sensors that are used with the oximeters and other monitors. Some of the sensors are disposable and some durable. These devices are used by hospitals and doctors to measure the amount of oxygen, CO2, and anesthesia in a patient's bloodstream. X----- sells to licensed physicians, hospitals, clinics, dentists, medical centers and medical colleges. All of the products bear a label stating that Federal law restricts the sale of such devices to sale by or on the order of a physician. You enclosed several copies of labels bearing such a legend.

OPINION

In California, except where specifically exempted by statute, Revenue and Taxation Code section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) Section 6369, interpreted and implemented by Title 28, California Code of Regulations, Regulation 1591, provides that sales of medicine, when prescribed and sold or furnished under certain conditions for the treatment of a human being, are exempt from sales or use tax. (Reg. 1591(a).) Regulation 1591(c) (2) provides that "medicines" do not include "articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof." As a rule, then, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines.

Unfortunately, neither your letter nor the label copies say how these devices are used. We thus assume that they are used either on blood samples taken from the patient or are temporarily inserted into an artery or vein and a measurement taken. As a result, we conclude that they are appliances, etc., excluded from the definition of "medicines" under Regulation 1591(c) (2). Sales of such items are subject to tax.

For your information, I have included a copy of Regulation 1591. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosure: Reg. 1591