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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
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February 18, 1993

BURTON W. OLIVER
Executive Director

Re:

I am responding to your letter to me of January 25, 1993. You were following up on my letter to you dated November 13, 1992, in which I expressed the opinion of the Legal Division that sales by your client, _____ of the above product in California do not qualify for exemption from sales and use tax under the prescription medicine exemption found in Revenue and Taxation Code Section 6369. You indicated that you are still of the opinion that such sales do so qualify and offered additional arguments in support of your view.

As I was reviewing your letter, I received your follow-up letter of February 4, 1993, and accompanying videotape describing the use of this product. Unfortunately, I must return the tape as we have no facilities for viewing or storing videotapes. At the same time I received your letter, I received information from our Chicago District auditing office that _____ is subject to an audit at this time, and your request for an opinion did not go through them.

I am most distressed that you did not tell me that your client was being audited. As you know from your involvement with this question, the availability of the medical exemption, as with so many others, depends heavily on how the product is being used. That being the case, it is premature for us to render an opinion as to taxability while the facts are still being gathered.

Therefore, I must reiterate our position that, based on the facts as we understand them at this time, the Branemark Bone Screw device does not qualify for the prescription medicine

February 18, 1993
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exemption from tax because it is a necessary component of a dental prosthetic device and has no independent significance. We are, however, fully prepared to review this matter should different facts develop during the audit.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

bc: Mr. Tom Glab, OHA District Auditing