



STATE BOARD OF EQUALIZATION

916-322-3684

July 8, 1986

Dear X-----,

Your letter of May 27, 1986 has been referred to me for a response. You request an opinion concerning the correct application of California tax to your sales of certain products. To help us determine the correct application of tax to your sales, you have included some literature that describes the specific products in question.

Specifically, you write that X----- is a manufacturer of artificial larynges and amplifiers. The specific products for which you request an opinion and a brief description (where applicable) of their functional use are as follows:

1. X----- Electronic Speech Aid

This is an electronic device for those who suffer temporary or permanent loss of voice from such causes as larynectomy, illness, injury or paralysis. The electronic circuitry and batteries are contained in a packet which can be put in a pocket or fastened to a belt. A X----- cord connects the packet to a Tone Generator which is held in the hand. Sound from the packet is delivered directly into the mouth through a slender plastic X----- tube (connected to the Tone Generator) which is placed in the mouth when then user wants to speak. A push button on the Tone Generator starts and stops the packet's sound which results in a speech affect by the user.

2. X----- No-Hands Model A

Similar to above except on-off switch is taped to the forehead of the user so quadriplegics can turn the device on and off by raising their eyebrows.

3. X----- No-Hands Model B

Similar to Model A except on-off switch is placed on an armband worn by the user on the upper arm. The user can turn the device on and off by pressing the switch against the ribcage.

4. X----- No-Hands Model C

Similar to Model B except on-off switch is attached to a bed for bedridden patients to operate. The on-off switch can be operated by a toe, arm, leg or head.

5. X----- Voice Amplifier

A pocket-sized battery powered electronic amplifier used to increase the loudness level of weak or esophageal voices.

6. X----- Amplifier

Similar to X----- Voice Amplifier except, because of its larger size, offers greater amplification.

7. X-----

A portable communications device which contains certain preprogrammed words, phrases and letters to allow the user to construct any message desired. The device is operated by applying slight pressure to one or a series of squares on the device's interchangeable overlays.

8. 15 Volt 4U X----- Batteries

Replacement batteries for X----- units.

9. X----- Cords

Replacement cords for X----- units.

10. X----- Moisture Filter

Replacement filters for X----- units.

11. X----- Moisture Filter Refill Pellets

Replacement pellets for X----- units.

12. X----- Plastic Tubes

Replacement tubes for X----- unit.

13. Replacement Battery Charger for X-----

14. Replacement Battery Pack for X-----

15. X----- Amplifier

Auxiliary amplifier to increase X----- volume.

16. X----- A.C. Power Supply

Used to connect X----- to A.C. power source.

17. X----- Covers

A washable bib to protect a laryngectomee from distress caused by sudden changes in temperature. The bib eases breathing and avoids dryness problems by warming and moistening inhaled air. Finally, the bib absorbs mucus or moisture and helps filter out dust.

18. X-----

A disposable foam filter for the laryngectomee to use to warm, moisten and filter the inhaled air. This reduces crusting around the stoma (opening) and coughing. It is held in place by an adhesive strip.

19. X----- Laryngectomy Protectors

Performs a similar function as the X----- Stoma Covers or X----- except this product is designed along the lines of a sweater.

20. Cover-Up – Shower X----- Covers

This appears to be a plastic bib type cover for the laryngectomee to use when showering.

California Sales and Use Tax Law imposes tax on the sale of tangible personal property in this state except where the sale is specifically excluded or exempted from taxation by statute (Rev. & Tex. Code §6051). Section 6369 of the Revenue and Taxation Code exempts the sale of "prescription medicines" from tax and section 6369(b) defines "medicine" to mean and include:

“...any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease....”

Section 6369(b)(2) specifically excludes from the definition of "medicines" articles which “are in the nature of ... 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....”

Applying the above criteria, we are of the opinion that the sale of described items are taxable pursuant to section 6051. Webster's New World Dictionary, Second College Edition, defines "substance" as a "matter of a particular kind or chemical component" and Dorland's Illustrated Medical Dictionary, Twenty-fourth Edition, defines "preparation" as a "medicine (drug or formula) made ready for use." In our view none of the items described can be considered a "substance or preparation intended for the internal or external application to the human body" pursuant to section 6369, since the items are either devices, or their component parts, used to facilitate human speech, or types of pads or dressings that protect a surgical opening in the body. Therefore, the described items more accurately reflect articles described in section 6369(b)(2) which are specifically excluded from the definition of medicines. Thus, since the sale of the described items are not specifically excluded from tax by statute, they are taxable.

I hope the above information is helpful. If you have any further questions or comments on the above, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr

Cc: Out-of-State (OH)
Compliance (LK)