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June 16, 1993

BURTON W. OLIVER
Executive Director

Ms. [G]
[A]
--- XXXX, --- ---
--- ---
--- ---, California XXXXX-XXXX

Re: [No permit Number]
Posey Vests
Hypo-Hypertherm Pads

Dear [G]:

I am answering your letter to me of May 20, 1993. You ask for a ruling regarding the application of sales and use tax to sales of these products. Since you did not identify the taxpayer, this letter does not constitute specific written advice to the taxpayer under Revenue and Taxation Code Section 6596. Rather, it constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts. 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.

OPINION

I have explained the operation of the exemption provided for sales of prescription medicines by Section 6369, as interpreted and implemented by Regulation 1591, in my previous letters. For the sake of brevity, I will not repeat that discussion here.

I will organize my answer around your discussion of the two items in which you are interested:

1. Posey Vests. You describe these items as follows:

“These vests are worn by a patient upon prescription of a physician to prevent and mitigate initial or additional injury. The vests are not for general use within the hospital, are kept in a secured area, and are only dispensed with a physician’s specific prescription.”

The facts indicate that this item is merely worn by a patient to prevent injury. It does not support the body structure nor replace or assist the natural function of a human body part. Therefore, we consider that this device is a device, appliance, etc., excluded from the definition of “medicines” by Regulation 1591(c)(2). We presume that this device is re-usable in which case the hospital is the consumer of the vests under Regulation 1503(b)(2).

2. Hypo-Hypertherm Pads. You describe the use of these items as follows:

“These pads are placed upon the bedridden patient upon prescription by a physician to regulate the patient’s body temperature and prevent radical body temperatures. The prescribing physician must specify the exact temperature and length of time the pad is to be worn by the patient.

You do not describe how these pads operate. Such pads as we have previously encountered were used in conjunction with Hot/Ice machines to regulate body temperature, and we assume such is the case here. We determined that such items did not qualify as medicines since they could not be fully worn on the patient. For that reasons, sales of such items are subject to tax.

If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es