



STATE BOARD OF EQUALIZATION

July 18, 1966

X-----

Dear X-----,

This is in reply to your letters of June 10, 1966, and a supplement thereto dated June 14, 1966, concerning the application of the California Sales and Use Tax Law to your rentals and sales of medical equipment and oxygen, respectively, under the following circumstances.

You are engaged in the business of renting and selling medical supplies and equipment (i.e., pressure breathing therapy equipment, suction machines, etc.) to individuals on a doctor's "prescription." In addition, it is our understanding from your letter that many of your customers purchase the contents of oxygen tanks for treatment of coronary conditions, emphysema, and other medical problems. You also state that in all instances where you sell oxygen to the California Physicians Service (CPS) for the benefit of state-aided individuals under the auspices of the so-called "Casey Bill," the sale is made pursuant to a prescription made out by the customer's doctor. The oxygen is usually delivered directly to the patient's home; we assume that it is usually too bulky or heavy to be carried by the doctor or picked up by the patient.

Specifically, you ask whether § 6369 of the California Sales and Use Tax Law, as explained by ruling 22 (copies enclosed), exempts the sale of oxygen by a medical supply company to the California Physicians Service acting as fiscal agent on behalf of a patient under a "state-aid" plan (i.e., Casey Bill) when the sale is made pursuant to a physician's prescription. You also ask whether sales tax applies to rental charges made to state agencies for the use of the medical equipment by state-aided individuals.

The scope of the prescription medicine exemption is explained in sales and use taxes ruling 22. You will observe that for the exemption to apply, not only must the articles be "medicines," but the other conditions for the exemption must be present.

Paragraph (2) of part (a) of the ruling states that tax does not apply to sales of medicines for the treatment of a human being, which medicines are "furnished by a licensed physician and surgeon or podiatrist to his own patient for treatment of the patient." To the extent you make sales of oxygen to persons who use it for medicinal purposes pursuant to a doctor's treatment, it is our opinion that the oxygen is "furnished

by a physician to his own patient for the treatment of the patient" within the meaning of the conditions set forth in paragraph (a)(2) of ruling 22.

In order to support your deductions for sales of oxygen, as a matter of documentary proof you must keep adequate and complete records (i.e., physician's prescription directing his patient to use the oxygen for human treatment). Such records shall be kept for sales and use tax purposes for a period of at least three years and should not be destroyed until permission to destroy them is requested of and granted by the board in writing pursuant to ruling 78, copy enclosed.

You also asked about the meaning of "prescription" in the Sales and Use Tax Law. A prescription, for the purposes of ruling 22, is defined in § 4036 of the Business and Professions Code, which has been recently amended to state:

“... an oral order given individually for the person for whom-prescribed, directly from the prescriber to the furnisher, or indirectly by means of a written order, signed by the prescriber, and shall bear the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, and the date of issue. No person other than a physician, dentist, *** podiatrist or veterinarian shall prescribe or write a prescription.

"Except as provided in Section 4036.1 an oral prescription shall as soon as practicable be reduced to writing by the pharmacist and shall be filed by, or under the direction of, the pharmacist."

The sales of medicines may be grouped under a number of situations, which are all set out in ruling 22. Part (5) of paragraph (a) excepts medicines sold

“... to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision ...”

Since many of the patients who use the oxygen are state-aided individuals (i.o., Aid to Disabled - ATD, Old Age Assistance OAS, etc.), in those cases it would appear that you are selling the oxygen to the state through its fiscal agent, CPS. Accordingly, when the oxygen is sold in a manner whereby the billing is made out to the California Physicians Service under the Casey Bill, for the benefit of state-aided individuals, it is our opinion that such sales are made to this state for the use in the treatment of a human being and, therefore, exempt within the meaning of ruling 22 (a)(5) of the Sales and Use Tax Law.

Since the equipment you rent to state-aided individuals (or others) is expressly excluded from the term "medicine," its rental to others would not be regarded as an exempt sale under ruling 22. We are enclosing a copy of ruling 70, "Leases of Tangible

Personal Property," which generally explains the taxability of leased tangible personal property.

It you have any further questions relating to this matter, please do not hesitate to call upon this office again.

Very truly yours,

E. H. Stetson
Tax Counsel

EDM:em
Enclosures

Cc: San Francisco – District Administrator