

**STATE BOARD OF EQUALIZATION**

916-445-2488

January 3, 1978

[X]

Dear [X]:

This is in response to your letter of December 14, 1977 to Mr. Philip R. Dougherty which has been referred to the undersigned for reply. Your inquiry concerns the application of the recent amendments to Revenue and Taxation Code Section 6369, effective October 1, 1977. Specifically, you wish to know whether tax applies to the sale of intraocular molecular lenses manufactured by your company. At present you feel that such devices are exempt from tax under Section 6369.

Revenue and Taxation Code Section 6369(b)(1) provides that:

“‘Medicines’ do not include:

- (1) Any auditory, prosthetic, ophthalmic or ocular devices or appliances....”

Revenue and Taxation Code Section 6369(c) now provides that:

“Notwithstanding subdivision (b), ‘medicines’ as used in this section shall mean and include: ...

- (4) Prosthetic devices, other than dentures and auditory, ophthalmic and ocular devices or appliances, designed to be worn on or in the person of the user to replace or assist the functioning of a natural part of the human body; and

- (5) Artificial limbs and eyes, or their replacement parts, for human beings.”
(Emphasis added)

[X]

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January 3, 1978
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Intraocular molecular lenses would be considered ophthalmic or ocular devices. As such they are excluded from the definition of "medicines" under Section 6369(c)(4) and tax would apply to their sale.

If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Legal Counsel

MCA:jw



STATE BOARD OF EQUALIZATION

916-445-2488

December 13, 1977

[X]

Dear [X]:

This is in response to your letter of November 1, 1977 to Mr. Dennis Maciel of our Sacramento office which has been referred to the undersigned for reply.

Your inquiry concerned the classification of intraocular plastic lens implants under the Sales and Use Tax Law. As we understand it, these lenses are implanted by your client, an ophthalmologist, in a patient's eye when the original lens is damaged and not functioning. Currently, your client pays sales tax reimbursement when he purchases the lenses from his supplier.

You wish to know whether this type of sale is exempt from sales tax. In addition, you would like to know whether ordinary contact lenses are exempt from tax.

Revenue and Taxation Code Section 6369(b)(1) provides that:

“‘Medicines’ do not include:

- (1) Any auditory, prosthetic, ophthalmic or ocular devices or appliances....”

Revenue and Taxation Code Section 6369(c) now provides that:

“Notwithstanding subdivision (b), ‘medicines’ as used in this section shall mean and include: ...

- (4) Prosthetic devices, other than dentures and auditory, ophthalmic and ocular devices or appliances, designed to be worn on or in the person of the user to replace or assist the functioning of a natural part of the human body; and

(5) Artificial limbs and eyes, or their replacement parts, for human beings.”

Intraocular molecular lenses and regular contact lenses would not be considered “medicines” under Section 6369 which excludes all ophthalmic devices except artificial eyes.

The sale of ophthalmic materials such as you describe is covered by Sales and Use Tax Regulation 1592 (copy enclosed) which provides that:

“A physician and surgeon or optometrist is the consumer of ophthalmic materials including eyeglasses, frames, and lenses used or furnished in the performance of his professional services in the diagnosis, treatment or correction of conditions of the human eye. Tax applies with respect to the sale of such materials to physicians and surgeons and optometrists.”

Your client’s supplier has, therefore, been correctly collecting sales tax reimbursement for the sale made of intraocular plastic lenses.

If you have further questions concerning this matter, please write this office.

Very truly yours,

Mary C. Armstrong
Legal Counsel

MCA:jw

Enclosure