

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
TELEPHONE (916) 920 - 7445

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April 18, 1994

BURTON W. OLIVER
Executive Director

[X]

Re: [No Permit Number]

Dear [X],

The Out-of-State District has asked the Legal Division to respond to your letter dated February 23, 1994, to the [X] Administrator which accompanied your Application for Seller's Permit. I apologize for the delay, but we only received the letter on March 28, 1994. [X] appears to be a vision medical care plan. You describe the benefits of your plan and the methods of payment and request an opinion regarding the application of sales tax to your plan. It appears from the list of payments that [X] reimburses the customer for charges made by the provider for services and ophthalmic materials - e.g., glasses, contacts, etc., - but does not actually sell ophthalmic materials itself.

OPINION

Regulation 1592, regarding taxation of sales of ophthalmic materials, provides as follows:

“A physician and surgeon or optometrist [hereinafter, generally, “physician”] 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.”

(Reg. 1591(a).) The same rule applies to a registered dispensing optician. (Reg. 1591(b) (1).) Thus, under the regulation, the taxable event is the sale of the materials to the physician or optometrist.

The fact that payment for the charges is made in whole or in part by medical insurance does not affect the normal rules with respect to the application of tax. (Reg. 1591(n).) Therefore, under Regulation 1592, the retailer of the ophthalmic materials is the supplier to the physician or optician and not the medical insurer. If our conclusion regarding the nature of [X]'s

[X]

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operation is correct, you need not obtain a seller's permit. My check of the files indicates none has yet been issued. You would need a permit only if you were selling ophthalmic materials to physicians or licensed opticians.

For your information, I have included copies of Regulations 1591 and 1592. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Encs.: Regs. 1591 & 1592