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June 30, 1993

Ms. [J]  
 Vice-President, Sales  
 [S]  
 XXXX --- ---, Suite XXX  
 ---, California XXXXX

Re: S- -- XX-XXXXXX  
 Tinting of Contact Lenses

Dear Ms. [J]:

I am responding to your letter of May 24, 1993, to the Legal Division. You ask if your company's tinting of soft contact lenses which are sold by doctors and laboratories to their customers throughout the United States constitutes "fabrication" subject to sales tax.

Unfortunately, you do not supply enough facts for me to give you a definitive opinion. The tax consequences depend on whether or not [S] buys the lenses and then tints and sells them to the doctors and laboratories; or whether the latter buy the clear lenses, send them to [S] for tinting, and then sell the tinted lenses.

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) The definition of "gross receipts" includes the "cost of the material used, labor or service cost, interest paid, losses or any other expense." (§ 6012(a)(2).) The total amount of the sale price includes any services that are a part of the sale. (§ 6012(b)(1).)

B. Producing, Processing, and Fabricating.

Regulation 1526, interpreting and implementing Section 6006(b), provides as follows:

**"(a) IN GENERAL.** Tax applies to charges for producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing printing, or imprinting.

**“(b) OPERATIONS INCLUDED. ...** Producing, fabricating, and processing include any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting the creation or production of tangible personal property.”

\* \* \* \*

“A process is a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.” (Cochrane v. Deener (1877) 94 U.S. 780, 787.) “It effectuates a change in form, contour, chemical combination, physical appearance or otherwise by artificial or natural means and, in its more complicated form, involves progressing action in performing, producing, or making something.” (Corn Products Refining Co. v. Fed. Trade. Comm’n (7th Cir. 1944) 144 F.2d 211, 219.)

C. Tax Consequences to [S]

Physicians and surgeons or optometrists are the consumers of ophthalmic materials, including eyeglasses, frames, and lenses used or furnished in the performance of their professional services in the diagnosis, treatment, or correction of eye conditions. (Reg. 1592(a).) You indicate that [S] tints contact lenses “for” doctors and laboratories. We thus assume that the doctors and laboratories send the clear lenses to [S] for tinting. Alteration in physical appearance is one of the procedures defined in Corn Products as “processing.” Thus we conclude that, assuming our assumption as to the source of the clear lenses is right, the tinting of soft contact lenses is a step in the creation or production of new lenses for consumers who supplied the materials used and so subject to tax under this fact situation and the above authority.

For your information, I have included a copy of Regulations 1526 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. 1526 & 1592