

**STATE BOARD OF EQUALIZATION**

(916) 445-3237

April 21, 1981

Dear Mr. X-----,

As a result of the meeting held in Sacramento with you, Mr. X----- and Mr. Jugum, we have studied the question of the correct application of tax to the sale of artificial eyes.

We understand that Mr. X----- is a licensed dispensing optician. The sole function of his company, X-----, is to manufacture and fit artificial eyes on patients referred by ophthalmologists. All fittings are done pursuant to the order or prescription of an ophthalmologist.

The purpose of our meeting was twofold. First, you wished to discuss whether or not the sale of artificial eyes and related supplies prior to October 1, 1977 qualified as a sale of ophthalmological materials under Revenue and Taxation Code Section 6018 and Sales and Use Tax regulation 1592. Secondly, you questioned whether X----- is required to register as a seller and hold a sellers permit in light of the October 1, 1977 amendments to Revenue and Taxation Code Section 6369 and Sales and Use Tax Regulation 1591 exempting artificial eyes and their replacement parts.

With regard to the first question of whether artificial eyes, eye forms and scelera lenses would be considered ophthalmological materials under Revenue and Taxation Code section 6018 and regulation 1592, we have concluded that these items would be considered to be ophthalmic materials as that term is used in Section 6018. The term ophthalmic is defined in Webster's "New Collegiate Dictionary" as objects which are "of, relating to or situated near the eye." We are of the opinion that all of the items furnished by X----- come within this definition of ophthalmic materials. Artificial eyes are replacements for eyes removed by accident or disease, which are situated in the eye and which prevent sagging and drooping of the eye socket. Eye forms are used alone or in conjunction with an artificial eye to maintain sizing in the socket during growth of the head. Scelera lenses are large contact lenses which cover the entire eye including the white portion. All of these items are furnished to patients by X----- pursuant to the written prescription of an ophthalmologist. We are therefore of the opinion that for the period prior to October 1, 1977, X----- was the consumer of such ophthalmic materials and tax applied with respect to the sale of such materials to X-----.

The second question involves the responsibility of X----- to register as a seller and hold a Seller's Permit as required by Revenue and Taxation Code Section 6066.

Prior to and after October 1, 1977, ophthalmic or ocular devices or appliances were specifically excluded from the definition of the term "medicines." As you are aware, effective October 1, 1977, Section 6369 of the Revenue and Taxation Code was amended to add artificial eyes or their replacement parts to the term "medicines." Section 6369{f} was added to provide that prosthetic devices, and replacement parts for such devices, furnished pursuant to the written order of a physician, shall be deemed to be dispensed on prescription. As a result of this amendment, artificial eyes on their replacement parts which are furnished pursuant to a written order of a physician shall be deemed to be dispensed on prescription and are exempt from tax when furnished to patients by companies such as X-----.

To the extent X----- only furnishes artificial eyes, eye markers and sclera lenses pursuant to the written order or prescription of ophthalmologists it will not be considered to be making any sales of tangible personal property, the gross receipts of which are subject to tax. As such, it will not be required to register with this board as a seller.

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

Very truly yours,

Mary C. Armstrong
Staff Counsel

MCA/tlw

bc: Mr. Don Hennessy
Hollywood Auditing – Maywood Wong
San Francisco Auditing