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November 3, 1994

X-----

BURTON W. OLIVER
Executive Director

RE: X-----
Neck Traction Units

Dear X-----,

I am responding to your letter to the Legal Division which we received on September 7, 1994. You ask about the application of sales tax to your company's sales of neck traction devices to doctors of chiropractic for their use in treating their patients. You do not describe the neck traction devices about which you inquire.

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 stated, all statutory references are to the Revenue and Taxation Code.) "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ..." (§ 6091.) "Exemptions from taxation must be found in the statute." (Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 pO.2d 201.]) "The taxpayer has the burden of showing that he clearly comes within the exemption." (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571J.]

Chiropractors and Doctors of Chiropractic are not physicians. As a result, sales to them may be subject to tax. Section 6018.4 provides, however a limited exemption from tax for chiropractors by declaring such person to be consumers of vitamins, minerals, dietary supplements, and orthotic devices used or furnished by them in the performance of their professional services. We have previously determined that the words "orthotic devices" have the same meaning in Section 6018.4 as they do in Section 6369(c) (3) - i.e., a support or brace for the body structure fully worn on the body of the patient. In transactions which qualify under this statute, tax is due when the chiropractor purchases such items but not on his subsequent sales to patients when the sale is made in the course of rendering professional services. Retail sales to non-patients or to patients but not in the course of rendering professional services are subject to tax.

You state that the neck traction devices which your company makes are sold to doctors of chiropractic "for use on their patients when prescribed by the doctor for correction of body (neck) structure." This description indicates that your company's products may be capable of being fully worn on the patient- such as a cervical collar- rather than being attached to a bed or table as traction devices usually are. If so, then your sales to them are subject to tax. If they are not fully worn, or your customers also sell these items over the counter, Section 6018.4 does not apply, but you may sell them free of tax by timely accepting resale certificates containing the elements set forth in Regulation 1668(a). Please note that if the customer is buying an item for use on a patient during the course of treatment, and the item qualifies as an orthotic device under the above definition, X----- cannot accept a resale certificate on the sale.

For your information, I have included a copy of Regulation 1668. 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:cl

Enclosure: Reg. 1668

Cc: Oakland District Administrator