



**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-8485

April 26, 1991

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Re: Taxability of Dental Supplies, Devices, and Appliances

Dear ---:

This is in response to your letter of January 4, 1991, inquiring as to the taxability of various dental devices and substances.

Facts and Issues

Specifically, you described the following facts and issues:

----- is retail establishment that sells dental devices and substances to dentists for the treatment of their patients. The purpose of this letter is to determine if --- should charge sales tax on certain items. Specifically, we sell a number of items that bear one of the following legends:

- 1.) Caution: U.S. Federal law restricts this device to sale by or on the order of a dentist.
- 2.) Caution: U. S. Federal law restricts this device to sale by or on the order of a Dental Professional.

3.) Caution: Federal (USA) law prohibits dispensing without a prescription.

4.) For dental use only.

There is also some confusion regarding substances and devices that have the same composition and are used for the same purpose but are made by different manufacturers. What is the status of such an item that has either no legend, or “For dental use only” while the same substance or device made by a different manufacturer contains one of the three ‘Caution Legends’ listed above?

### Sales Tax – General Discussion

Except to the extent specifically excluded or exempted by statute, the California Revenue and Taxation Code imposes an excise tax in connection with the retail sale of all tangible personal property sold or purchased for use in this state. (All statutory citations are to the California Revenue and Taxation Code, unless otherwise noted herein.) Section 6051 imposes sales tax on the gross receipts from the retail sale of all tangible personal property sold in this state. The sales tax is imposed upon the retailer. California Civil Code Section 1656.1 allows the retailer to collect sales tax reimbursement from the consumer.

### Dental Supplies, Devices and Appliances

The taxability of dental supplies, devices, and appliances is covered by Section 6369 and Sales and Use Tax Regulation 1591, copies of which are enclosed. The general rule set forth in the regulation is that: “[t]ax applies to retail sales of drugs, medicines, and other tangible personal property by pharmacists and others except . . .” to the extent specifically excluded or exempt by statute or regulation. Additionally, Sales and Use Tax Regulation 1506(c) provides:

(c) DENTISTS AND DENTAL LABORATORIES. Dentists are consumers of the materials, supplies, dental laboratory products and other tangible personal property which they use in performing their services. Tax, accordingly, applies to the sale of the tangible personal property to them.

Dental laboratories are the retailers of the plates, inlays and other products which they manufacturer for dentists or other consumers. Tax Applies to their entire charges for such products regardless of whether a separate charge or billing is made for materials and manufacturing services.

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In our opinion, just because an item is dispensed by prescription bearing one of the legends described above, it is not necessarily exempt from sales tax liability. In order to escape such liability, the item must satisfy the definition of a "medicine" and it must be sold as specified by statute or regulation.

If you have questions about whether or not specific items fall within the medicines exemption, please feel free to write to us again.

Cordially,

Victoria Lani Arena  
Tax Counsel