



STATE BOARD OF EQUALIZATION

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Controller, Sacramento

BURTON W. OLIVER
Executive Director

May 1, 1995

X-----

Dear X-----,

I am answering your letter to me dated March 15, 1995, following up on our previous correspondence. You indicate that you have written to the FDA requesting clarification as to whether or not that agency classifies devices such as the one you sell as medicines. You ask that if the FDA gives a positive answer, would the Board of Equalization also consider the device as a medicine.

The Sales and Use Tax Law, like many other tax laws, "employs relatively artificial, relatively self-contained, concepts. If it utilizes popular meaning or concepts from other fields of law, it does so only by force of its own objectives and definitions." (King v. S.B.E. (1972) 22 Cal.App.3d 1006, 1011.) That is, if the product meets the definition of a "medicine" as contained in Revenue and Taxation Code section 6369 and Regulation 1591, which we have discussed extensively in our previous correspondence, then it is considered a "medicine" for sales and use tax purposes no matter how it is defined by the FDA. Therefore, even if the FDA declared the device you sell to be a medicine for its purposes, our opinion would stand, because we have concluded that the biofeedback system does not meet the definition of a "medicine" under section 6369.

Sincerely,

John L. Waid
Tax Counsel

JLW:sr