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**STATE BOARD OF EQUALIZATION**

(916) 445-2488

March 23, 1978

Mr. G--- L. B---  
President  
C--- M--- P---  
XXXX --- ---, Suite XXX  
---, California XXXXX

SR -- XX XXXXXX

Dear Mr. B---:

This is in reply to your letter of March 9, 1978 concerning the correct application of Sales and Use Tax Regulation 1591 (copy enclosed) to your business.

As we understand it, you have a specialty pharmacy which services only those patients who are in skilled nursing homes. Nothing can be administered to these patients without specific orders from a physician. You do not accept ambulatory prescriptions or walk-in patients. You feel that the type of pharmacy practice you have is unique, since most pharmacies serving skilled nursing facilities also serve the public.

Your inquiry concerns whether tax applies to the sale of items such as liniment, aspirin, milk of magnesia and germicidal sterilizing solution when such items are sold to a licensed health facility and later furnished to patients pursuant to the order of a physician, or in the case of the germicidal sterilizing solution, used on equipment pursuant to the order of a physician.

Sales and Use Tax Regulation 1591(g) provides in part:

Tax does not apply to sales to a health facility of medicines for the treatment of a human being regardless of whether or not a specific charge is made for the medicines.” (Emphasis added.)

In order for items to be exempt from tax under Section 1591(g) the following criteria must be met:

1. The items must be sold to a "health facility" as defined in Health and Safety Code Section 1250 (i.e., "a facility, place or building which is organized, maintained and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation . . . to which such persons are admitted for a 24-hour stay or longer, . . .")

2. The items must be "medicines" as defined in Regulation 1591(b)(1) through (6), (i.e., a "substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease. . .")

In the examples you have presented for our consideration, there is a different application of tax for items sold by a pharmacy such as yours and those sold over-the-counter to ambulatory or walk-in patients. Items which are purchased without a prescription, such as liniments, aspirin and milk of magnesia are not exempt from tax when sold over-the-counter to purchasers without a doctor's order. The same items, however, are exempt from tax when sold to a health facility and later furnished to patients in that facility pursuant to the order of a physician. The exception to this rule would be in the case of items which cannot be considered "medicines" as defined in Regulation 1591(b)(1) through (6). For example, germicidal solution ordered for sterilizing certain medical equipment would not be exempt from tax even if used pursuant to the orders of a physician since this item does not come within the definition of "medicines" used in Regulation 1591(b)(1) through (6).

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

Very truly yours,

Mary C. Armstrong  
Legal Counsel

MCA;jc  
Enclosures