

STATE BOARD OF EQUALIZATION

January 13, 1992

Re: Ameri-Glide Stairway Lift

Dear ---

I am responding to your letter to me which the Legal Division received on November 26, 1991. You have asked whether your purchase of the above device was subject to sales tax.

In your letter, you describe your problem as follows:

“Enclosed is a prescription for and brochure for the stairway lift we have had to purchase for my husband to get to the 2nd level of our home. He has suffered a stroke and is paralyzed on one side. He is unable to walk and we have no bathing facilities or bedroom on the main level of our home.”

OPINION**A. Prescription Medicines**

Revenue and Taxation Code Section 6369, interpreted and implemented by Title 28, California Code of Regulations, Regulation 1591 provides that sales of medicines, when prescribed and sold or furnished under certain conditions for the treatment of a human being, are exempt from sales or use tax. (Reg. 1591(a).) Subdivision (b)(1) of Regulation 1591 defines “medicines” to “mean and include any substances or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and which is commonly recognized as a substance or preparation intended for such use.” However, Regulation 1591(c)(2) adds that “medicines” do not include “articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical, or physical equipment or article or the component parts and accessories thereof.” (Regulations are Board promulgations that have the force and effect of law. Further statutory citations are, unless otherwise stated, to the Revenue and Taxation Code.) As a general rule, then, items used to diagnose a condition or to apply medicine or treatments to the patient are not considered to be medicines.

Regulation 1591(k) interpreting and implementing Section 6369.2, does provide that tax does not apply to sales of crutches, quad canes, wheelchairs, canes, and walkers and replacement

parts for these devices when sold to an individual for the personal use of that individual as directed by a licensed physician.

B. Tax Consequences

We understand that the stairway lift which your family has purchased is prescribed by a doctor due to your husband's limited mobility, which is the purpose of the devices listed in the above exemption. Unfortunately, the legislature did not enact a generic exemption for such devices but rather exempted specific items. Stairway lifts were not included. When a statute providing an exemption lists specific items, the Board may not exempt items that are not on the list. Regretfully, we must conclude that sales of stairway lifts are subject to tax.

For your information, I have enclosed a copy of Regulation 1591. 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:es
4240I

Enclosure: Regulation 1591