

**M e m o r a n d u m****425.0211.750**

To: Ms. Karen Hughes  
Associate Tax Auditor  
Audit Evaluation and  
Planning Section – MIC:40

Date: February 25, 1997

From: John L. Waid

Subject: X-----

I am responding to your memorandum dated January 7, 1997, to Assistant Chief Counsel Gary J. Jugum regarding the application of tax to X-----'s sales of a product called "Biogran." You attached to your memorandum a copy of a brochure which X----- faxed to you on December 16, 1996. You describe the product as follows:

"Biogran is a resorbable synthetic graft for use in repair of bony defects. It is a bioactive glass of narrow size range which has been shown to accelerate the healing of bone tissue in oral defects. [¶] As 'Biogran' is permanently implanted in patients by dentists, it appears that 'Biogran' may be exempt from tax .... "

Regulation 1591(b) (2) discusses the application of tax to sales of implants as follows:

"Bone screws, bone pins, pacemakers, and other articles permanently implanted in the human body to assist the functioning of, as distinguished from replacing all or any part of, any natural organ, artery, vein or limb and which remain or dissolve in the body .... "

We have previously determined that stimulation of bone growth is a natural function of a part of the body. (See, e.g. Annot 425.0473 (2/13/91.) You also indicated that these items are permanently implanted. Therefore, we agree that sales of Biogran are not subject to tax.

JLW:sr