

**STATE BOARD OF EQUALIZATION**

916-322-6083

June 4, 1990

Re: Application of Tax to Sale of Condoms

Dear X-----,

I am writing in response to your April 13, 1990 letter to the Van Nuys office of the State Board of Equalization concerning the application of sales tax to the sale of condoms by the Student Health Center X-----.

In your letter, you state that the Student Health Center is a public institution, state-funded and regulated through the Office of the Chancellor, California State University. The Center is non-profit and serves only fully matriculated students of X-----. The Center wishes to supply condoms as a means of limiting the spread of sexually transmitted diseases. You seek an exemption from the application of sales tax to the Center's sale of condoms to students.

Sales tax is imposed on all retail sales of tangible personal property in the state unless specifically excluded or exempted from taxation by statute. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code Section 6369 exempts from taxation the sale of medicines which are furnished under certain specified circumstances. A copy of Section 6369 is enclosed.

Section 6369(b) defines "medicines" as "any 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 and which is commonly recognized as a substance or preparation intended for that use." Section 6369(b) also states that "medicines" do not include such articles as "splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, [or] devices..." condoms are "contrivances" or "devices" rather than "substances" or "preparations", and thus do not come within the definition of "medicines".

Some items which are not substances or preparations are nonetheless classified as "medicines" pursuant to Section 6369(c). However, those articles (such as bone screws, corrective braces or supports, prosthetic devices, and artificial limbs and eyes) are permanently implanted in the body or replace or assist the functioning of natural body parts. Condoms are not similar to such items and therefore, cannot be classified as "medicines" under Section 6369(c).

Since condoms are not exempt "medicines", sales tax applies to the Student Health Center's sale of condoms to students, even if the condoms are furnished pursuant to a prescription or by any of the other methods listed in Section 6369(a). Section 6369, as a tax exemption statute, must be strictly construed and cannot be enlarged or extended beyond the plain meaning of the language employed. (McConville v. State Board of Equalization (1978) 85 Cal.App.3d 156.) the Board, therefore, has no power to create an exemption for the sale of condoms, and cannot interpret the Revenue and Taxation Code liberally to provide one.

I hope this letter has clarified the application of sales tax to the sale of condoms at the Student Health Center. Please contact me if I can be of further assistance.

Very truly yours,

Janet Vining
Tax Counsel

JV:wak
2214C

Bc: Mr. Glenn A. Bystrom
Mr. Jack A. Infranca, Van Nuys District

Bcc: Mr. John Abbott
Please consider for annotation, particularly the fact that condoms are subject to sales tax even when furnished pursuant to a prescription.