

M e m o r a n d u m**425.0270**

To: Ms. Shirley Johnson
Audit Evaluation and Planning

Date: March 8, 1991

From: John L. Waid
Tax Counsel

Subject: H---
(No Permit Number)

I have received your memorandum of January 16, 1991. You are requesting advice as to whether Continuous Positive Airway Pressure (hereinafter "CPAP") Machines are within the medical oxygen delivery system exemption provided by Section 6369.5, interpreted and implemented by Regulation 1591(m).

You attached to your memorandum a copy of a letter dated January 3, 1991, from J--- G--- requesting an interpretation that CPAP machines are covered by the above exemption. You also attached a copy of a brochure entitled "A User's Guide to Sleep Apnea Therapy" published by M--- M--- E---, Inc. describing the disease and the use of a CPAP machine in treating it.

According to the brochure, sleep apnea is a syndrome in which the sufferer periodically ceases breathing during sleep and only resumes normal breathing upon waking up. The CPAP machine continuously supplies a small amount of positive air pressure through a hose connected to the nasal airway, which keeps the airway from collapsing. The positive pressure keeps air flowing into the lungs, thus providing sleep apnea sufferers with the sleep they need.

OPINION

As you know, devices that administer treatment to a person are generally considered "devices" and so not "medicines" under Regulation 1591(c)(2). The legislature has, however, changed this result in the case of systems designed to deliver oxygen – a medical gas – to a patient. Regulation 1591(m) describes the components of a medical oxygen delivery system.

We have previously concluded that in order for a piece of equipment to qualify as a medical oxygen delivery system it must deliver air or oxygen into the breathing system of the patient. In general, devices that only assist the patient in breathing and do not deliver air or oxygen directly to the patient, do not qualify as medical oxygen delivery systems. Applying the above criteria, we have previously determined that positive pressure breathing units qualify as medical oxygen delivery systems. As a result we conclude that the CPAP in question is a medical oxygen delivery system within the meaning of Regulation 1591(m). Sales of this product are thus exempt from tax.

JLW:es
3755I

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Mr. A--- F. B---
President and CEO
O--- M--- Equipment
XXXX XXth Street
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SR --- XX-XXXXXX
CPAP Devices

Dear Mr. B---:

I am responding to your letter dated April 9, 1996, to the State Board of Equalization regarding the taxation of sales of Continuous Positive Airway Pressure (CPAP) humidifiers. As you know, we have concluded that CPAP machines are medical oxygen delivery systems, the sales of which are exempt from tax. (Annot. 425.0270 (3/8/91).) We have also previously determined that CPAP humidifiers, which are an integral part of the CPAP device and deliver humidified air directly to the patient (as opposed to room humidifiers), are part of the CPAP system. As a result, their sales are also exempt from tax. (Reg. 1591(m).)

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
Senior Staff Counsel

JLW:sr