



STATE BOARD OF EQUALIZATION

0190 Chiropractors furnish corrective appliances to patients.

November 7, 1960

Dear Dr. X-----,

You have requested our advice as to the application of sales tax to charges by chiropractors for the examination and treatment of a patient where the chiropractor also prescribes and furnishes to the patient corrective shoes, arch supports, and other appliances. We think that sales tax applies to the fair retail value of such items and the charges should be segregated from the charges for professional services in the statements rendered to each patient furnished such items.

Our conclusion is based upon Section 6006, subdivisions (a) and (f), of the Sales and Use Tax Law, defining "sale" and Section 6007 defining "retail sale" (a pamphlet copy of the Sales and Use Tax Law has previously been given to you). The fact that chiropractors are licensed by the Board of Medical Examiners after examination by the Chiropractic Examining Committee does not prevent the application of tax to sales made by them in their professional capacity. This is clearly shown by the decision of the California Supreme Court in Kamp v. Johnson, 15 Cal. 2d 187, holding that oculists and opticians (prior to the enactment of Section 6018) were required to pay sales tax on lenses and frames sold to patients in connection with the rendition of professional services. In so holding, the court upheld the validity of former Ruling 37.

A few excerpts from the Kamp case will demonstrate the correctness of our position. The definition of the activities and question involved are stated by the court as follows:

"Plaintiff makes a lump sum charge to his patients, the form of his statement reading 'For Professional Services Rendered'. There is no itemization in the statement of separate charges for services, lenses, frames or fitting, although the cost of the lenses and frames is taken into consideration in arriving at the amount of the lump sum charge. The only question presented for our consideration is whether the retail sales tax applies to the portion of the charge which may be said to represent the fair retail value of the glasses furnished by the plaintiff to his patient.

‘the plaintiff denies that he is engaged in the business of selling tangible personal property, contending that he is engaged in the practice of a profession and that the furnishing of glasses to his patients is purely incidental to the rendering of professional service.’”

The conclusions of the court are stated as follows:

“The fact that plaintiff’s operations are regarded as the practice of a profession under the State Optometry Act does not preclude the possibility that they may involve sales of tangible personal property within the meaning of the Retail Sales Tax Act for plaintiff’s obligations for sales tax is to be determined through a consideration of the provisions of the latter act.

“The manner in which the terms ‘retailer, ‘sale’, and ‘business’ are defined in the act compel, in our opinion, the conclusion that plaintiff makes a sale of tangible personal property within the meaning of the act when he furnished glasses to his patient.

“The broad definition of the term ‘retail sale’ as ‘a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property...’ compels the conclusion that the tax must be paid at some time with respect to all tangible personal property sold for use or consumption and the sale of which is not specifically exempted from the tax and leaves for construction only the question as to the person to be regarded as the retailer or as making the retail sale of the tangible personal property. As we have already determined that the furnishing of the glasses by the plaintiff to his patient constitutes a sale of tangible personal property and as that sale is clearly not a sale for resale, it follows that the plaintiff is the retailer of the glasses within the meaning of the Retail Sales Tax Act.”

If you have any further questions, please feel free to call upon us.

Very truly yours,

John H. Murray
Associate Tax Counsel

JHM:fb

Cc: San Francisco – Administrator