



STATE BOARD OF EQUALIZATION

916-324-5589

February 16, 1990

Dear X-----,

You letter of January 4, 1990 to Principal Tax Auditor Glen A. Bystrom has been referred to the undersigned for reply. You have requested our opinion regarding the correct application of tax to the ErecAid System® under the California Sales and Use Tax Law.

As we understand it, the ErecAid System® is dispensed only on prescription. It is a vacuum tumescence/constriction therapy device used in the treatment of male impotence.

Revenue and Taxation Code section 6369 exempts items which qualify as "medicines" from tax. Section 6369 provides in subdivision (b)(2) that the term "medicines" does 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. "

Subdivision (c) of section 6369 provides in paragraph (4) that notwithstanding subdivision (b), the term "medicines" does include:

"Prosthetic devices, and replacement parts for such devices, designed to be worn on or in the person of the user to replace or assist the functioning of a natural part of the human body, other than auditory, ophthalmic and ocular devices or appliances, and other than dentures, removable or fixed bridges, crowns, caps, inlays, artificial teethe and other dental prosthetic materials and devices."

The ErecAid System® consists of a detailed instruction book, vacuum cylinder, elastic tension rings and a special vacuum pump. The pump and the cylinder are removed after engorgement and rigidity are achieved and the tension rings remain. As such, this device cannot be considered to be fully worn on the person of the user when it is replacing or assisting the function of a natural part of the human body and therefore it does not qualify as a prosthetic device as that term is defined under the California Sales

and Use Tax Law. The fact that the ErecAid System® may be considered a prosthetic device by Medicare or others in the medical establishment does not mean it qualifies as an exempt prosthetic device under the California Sales and Use Tax Law.

If you have further questions concerning this matter, please write this office.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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Cc: Mr. Glen A. Bystrom