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**STATE BOARD OF EQUALIZATION**

916-445-8485

October 30, 1987

Dear [X],

This is in response to your October 12, 1987 letter requesting our opinion on the taxability of the sale of Eargene, Ori-Aid, and forced air blowers, all of which help maintain the function of hearing aids.

California Sales and Use Tax Law imposes a tax on the sale or use of tangible personal property in this State unless such sale or use is otherwise exempt from taxation by statute (Rev. & Tax. Code §§ 6051 and 6201). Although the sales tax is imposed on the gross receipts of the retailer, the retailer may collect sales tax reimbursement from the consumer (Civil Code § 1656.1). A "retailer" includes "[e] very seller who makes any retail sale or sales of tangible personal property ...." (Rev. & Tax. Code § 6015(a)). "Tangible personal property" means "personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses" (Rev. & Tax. Code § 6016).

One could assume from the above language that a hearing aid dispenser is the retailer of hearing aids furnished or sold by him or her. However, Revenue and Taxation Code section 6018.7 was promulgated to make an exception to the general rule of the imposition of sales tax when a licensed hearing aid dispenser is a party to a sales transaction. Section 6018.7 provides:

A licensed hearing aid dispenser is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to hearing aids sold or furnished by him or her.

Thus, a licensed hearing aid dispenser is considered the consumer of the hearing aid which he or she furnishes to persons with impaired hearing. Tax accordingly applies to the sale of the hearing aid to the licensed hearing aid dispenser, and tax will not apply to the sale by the dispenser.

The term "hearing aid" includes any necessary accessory or component part of the hearing aid which is fully worn on the body of the user. The term also includes replacement and repair parts (Sales and Use Tax Regulation 1506(e)). It is our opinion that Eargene, Ori-Aid, and forced air blowers are not necessary accessories or component parts of the hearing aid which are fully worn on the body of the user nor are we of the opinion that they are replacement or repair parts. Rather, we view Eargene, Ori-Aid, and forced air blowers as tangible personal property which

assist in the function of hearing aids. Therefore, tax applies to the sales price which the [H] charges its customers for the above-mentioned assistive accessories.

Since you are a retailer of Eargene, Dri-Aid, and forced air blowers, you are required to apply for a seller's permit and to file tax returns and remittances with the Board (see Rev. & Tax. Code §§ 6066, 6452, 6453, and 6454). We suggest you contact the Board's field office located in Oakland at Room 7072, 1111 Jackson Street, P.O. Box 27, Oakland, California, 94604-0027, telephone number (415) 464-0347. Our office personnel will be happy to assist you in completing the necessary paperwork.

If you have any further question, please feel free to write again.

Very truly yours,

E. L. Sorensen, Jr.  
Senior Tax Counsel

JT:ELS:md