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April 29, 1994

BURTON W. OLIVER
Executive Director

X-----

Re: X-----

Dear X-----,

I am responding to your letter of March 10, 1994. you ask whether sales, rentals and leases by your clients X-----, X----- and X----- of various air support therapy beds and related products such as mattresses and repair parts are exempt from California sales and use tax. You assert that the beds and related products are orthotic, prosthetic or similar therapeutic devices which qualify as medicines under Revenue and Taxation Code section 6369.

You state that the beds are used in hospitals, under the care of registered nurses, and are prescribed by physicians. The beds have been specifically designed to alleviate skin ulceration caused by long-term bed care. You have attached to your letter photographs and copies of photographs of the beds, operating procedures and procedures for patients with decubitus ulcers and several case studies. You state that the beds are rented to the patients, though some sales are also made to the patients, under doctor's prescription. Some sales are made to the hospitals, without doctor's prescription.

In California, except where specifically exempted by statute, Revenue and Taxation Code section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. A retail sale means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) All gross receipts are subject to a tax until the contrary is established. (Rev. & Tax. Code § 6091.)

Revenue and Taxation Code section 6369 provides an exemption from sales and use taxes for the sale or use of property defined as "medicines." That provision is explained and applied by Regulation 1591. Subdivisions (b) (4) and (b) (5) of Regulation 1591 explain that orthotic or prosthetic devices that are designed to be worn on or in the person of the user as a brace, support, or correction for the body structure or to replace a natural part of the body, such as dentures or bridges, may qualify as medicines. The beds in question would qualify as medicines under these provisions only if fully worn on the body of the patient.

To wear something means to have it physically on the person. The test is not whether the patient is always in contact with the property because the patient cannot move, but rather whether the property accompanies the patient on the patient's person when the patient does move. The beds in question do not. Therefore, they do not qualify as medicines. This conclusion is confirmed by subdivision (c) (2) of Regulation 1591 which specifically excludes hospital beds from the definition of medicines. We realize that your client's beds are specialized beds designed to provide more benefit than a standard hospital bed. The specialized beds, nonetheless, remain hospital beds, and sales or leases of the beds are subject to sales or use tax.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

Victor G. Matl
Tax Counsel

VGM:cl

Cc: Out-of-State District Administrator