


STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

WILLIAM M. BENNETT
First District, Kentfield

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

June 16, 1992

Mr. P--- B---
S--- H--- C---, Inc.
P.O. Box XXX
--- ---, California XXXXX-XXXX

RE: SY -- XX-XXXXXX

Dear Mr. B---:

I am writing this in response to your letter to me of May 4, 1992 and our recent telephone conversation. You have requested advice regarding the applicability of sales tax to sales by S--- H--- C---, Inc. ("S---"), of creams and washes to incontinent patients.

Your letter was occasioned by the California Department of Health Services' issuance of Allied Provender Bulletin 187 stating that reimbursement for sales tax would be omitted from selected ostomy creams and washes. You attached a copy of the bulletin to your letter. It listed six items by code under the title "Selected Ostomy Supplies: Sales Tax Reimbursement" as ostomy creams and washes the sales of which are exempt from tax under Revenue and Taxation Code Section 6369(g). The codes are 9980P, 9980R, 9980U, 9980Y, 9981B, and 9981C. You indicated that these codes are given for all creams and washes for ostomy and incontinent patients but that products 9980P, 9980U, and also 9980W are primarily for incontinent creams and washes.

Like ostomy supplies, incontinent supplies may be sold by dealers and well as registered pharmacists. You also stated that S--- is a registered pharmacy in some of its locations and a medical device retailer in others, but that all of its locations sell the creams and washes at issue.

You also attached to your letter one dated James N. Taylor, Acting Chief, Rate Development Branch, Department of Health Services, to you. It stated that in September 1991, the Board of Equalization issued a "formal tax finding" that incontinence creams and washes were exempt from state sales tax. The letter also stated that Medi-Cal reimbursement for such items would be stopped.

OPINION

A. Prescription Medicines.

Section 6369, interpreted and implemented by Regulation 1591, provides that sales of medicines, when prescribed or furnished under certain conditions for the treatment of a human being, are exempt from tax. (See, Reg. 1591(a). Unless otherwise stated, all statutory citations are to the Revenue and Taxation Code.). Sub-division (b)(1) defines " medicines" to "mean any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and which is commonly recognized as a substance or preparation intended for such use."

B. Tax Consequences to S---.

Skin creams and washes, when used on patients for sanitary purposes, have long been determined to qualify as medicines. (See, e.g., Annot. 425.0880. Annotations are excerpts from staff opinions and serve as a guide to staff policy.) Under Regulation 1591(a)(1), sales of such products are exempt when they are prescribed by a person authorized under state law to prescribe such medicines, dispensed on prescription and filled by a registered pharmacist according to law.

The exemption for the sales of creams and washes for ostomy patients is found in the language of Section 6369(g) which deems all such sales to have been made on prescription filled by a registered pharmacist. (See, Reg. 1591(j).) As a result, it does not matter whether or not the retailer is a pharmacy; its sales of creams and washes for ostomy patients are exempt from tax.

Sales of incontinence creams and washes are another matter. They only qualify for the exemption if sold to patients under the conditions set forth in Regulation 1591(a). Thus, sales of such products to patients by S---'s outlets which are registered pharmacies would qualify for the exemption while sales by those outlets which are retail supply houses would not.

For your information I have enclosed a copy of Regulation 1591. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again. Pursuant to your instruction, I am sending copies of this letter to Mr. I--- C--- at Department of Health Services and Mr. B--- A--- at C---.

Sincerely,

John L. Waid
Tax Counsel

JLW:es
Enclosure: Reg. 1591

cc: Irving Chanin

Mr. P--- B---

-3-

June 16, 1992
425.0435

Bob Achermann