



STATE BOARD OF EQUALIZATION

916-322-3684

March 17, 1988

X-----

Dear X-----,

Your letter of February 22, 1988 has been referred to me for a reply. Your letter requests an opinion concerning the correct application of tax to the sale of approximately 200 different items of medical supplies sold by X----- . The medical supplies in question are listed by name or an abbreviated name on an attachment to your letter.

California Sales and Use Tax Law imposes a tax on the gross receipts of retailers from the retail sale of tangible personal property in this state unless such sale is otherwise exempt or excluded from taxation by statute (Rev. , Tax. Code § 6051). Revenue and Taxation Code Section 6369 exempts prescription medicines from tax. The term "medicines" is defined in subsection (b) to "mean and include 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." However, Section 6369(b)(2) specifically excludes from the definition of medicines "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."

In order for the sale of "medicines" to be exempt from tax, the sale must be provided in Section 6369(a) which states as follows:

- “(a) There are exempted from the taxes imposed by this part the gross receipts from the sale,... in this state of medicines:
 - (1) Prescribed for the treatment of a human being by a person authorized to prescribe the medicine, and dispensed on prescription filed by registered pharmacist in accordance with law.

- (2) Furnished by a licensed physician and surgeon, dentist, or podiatrist to his or her own patient for treatment of the patient.
- (3) Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician and surgeon, dentist, or podiatrist.
- (4) Sold to a licensed physician and surgeon, podiatrist, dentist or health facility for the treatment of a human being.
- (5) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being, or furnished for the treatment of a human being by a medical facility of clinic maintained by this state or any political subdivision or municipal corporation thereof.”

We assume for purposes of this opinion that sales of medicines are to physicians or facilities within Section 6369(a) for the care and treatment of human beings.

Applying the above criteria, it is our opinion that based upon our understanding of the function and use of the following medical supplies, these items are excluded from the definition of “medicines” pursuant to Section 6369(b)(2) and therefore the gross receipts from their sale are subject to tax pursuant to Section 6051:

Airway (Adult)	Labels
Airway (Infant)	Laceration Tray
Airway	Mask
Adapter	Needle
Apron	Needle Counter
Arm Board	Needle – Disposable
Blade	Pillow Cover
Blade and Needle Guard	Scissors
Bandage – Elastic	Shoe Covers
Bandage – Esmark	Sponge
Bandage – Kling Elastic	Staple Extractor
Cabinet 42C7	Stethoscope
Disposable Bed Pan	Stopclock
Dust Cover	Syringe
EZ Prep Tray	Table Paper
Forceps	Tape
Gauze	Tongue Blade
Glove	Tray
Gown	Tourniquet
IV Pole	Wash Basin
Kleenex	X-ray Cape

Additionally, the following medical supplies are named on your list:

Adjustable Crutch	Quad Cane
Cane	Walker
Crutch (Safe-T-Test)	Wheelchair

Section 6369.2 exempts from tax the gross receipts from the sale of wheelchair., crutches, canes, quad canes, and walkers, and replacement parts tor such devices, when sold to an individual for the personal use of that individual as directed by a physician. Accordingly, X----- gross receipts from its sales of the adjustable crutch, cane, crutch (Sate-T-Test), quad cane, walker, and wheelchair are exempt from tax when these items are sold to an individual for the personal use of that individual as directed by a physician pursuant to Section 6369.2.

Finally, we are unfamiliar with the remaining medical supplies contained on your list. If you can provide us with a more detailed description of the function and use of each of these items, we will gladly render an opinion concerning the correct application of tax to their sales. With respect to your inquiry concerning freight charges, we need more specific information concerning the nature of the sale and the method of the transportation (United States mail, common carrier, facilities of retailer, etc.) before we can provide you with a response.

We hope the above information is helpful. Enclosed tor your review and reference is a copy of Sales and Use Tax Regulation 1591 (Prescription Medicines) and 1628 (Transportation Charges). These regulations interpret and apply the Revenue and Taxation Code. If you have any further questions concerning this topic, please do not hesitate to contact this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr
Enclosures

Bc: Mr. Glenn Bystrom
As we get further information from the taxpayer describing the medical supplies in question, we will forward our response to you.