

Memorandum

425.0487.100

To : Mr. Vic Anderson, Supervisor
Information & Advisory Unit, MIC:44

Date: March 7, 2005

From : Anthony Epolite
Senior Tax Counsel, MIC:82

Telephone: (916) 324-2642

Subject: L---, LLC - L---U--- Knee Scooter
SR – XXX-XXXXXX

I am responding to your memorandum dated August 24, 2004, regarding the applicability of sales tax to the rental and sale of knee scooters—whether the rental and sale of such equipment qualifies for exemption under Revenue and Taxation Code section 6369.2 and Regulation 1591.2. In your memorandum, you stated and asked:

“We are requesting your review and opinion regarding the application of tax on ‘L---U--- Knee Scooter,’ sold by L---, LLC. In her letter, copy attached, Ms. S--- P--- of L---, contends that this item qualifies as a non-taxable item pursuant to Regulation 1591.2, ‘Wheelchairs, Crutches, Canes, and Walkers.’

“Ms. P--- states that L---, will be renting and selling the L---U--- Knee Scooter, which is an alternative to using crutches for people with foot and ankle injuries. Those renting or buying this device will be required to have a medical prescription for the device.

“The attached, provided by Ms. Ptacek, describes the L---U--- Knee Scooter in part, as a durable medical equipment (#E1399) option that allows freedom to a patient otherwise restricted to crutches for a foot or ankle injury. The device is convenient, cost effective, and allows patients to continue a level of activity that is unparalleled by other alternatives.

“Please advise as to whether the L---U--- Knee Scooter qualifies as a non-taxable medical device.”

In your memorandum, you referred to the following letter, received by the Department on July 13, 2004, which stated:

“It is my understanding that durable medical equipment, rented or sold by prescription is not subject to sales tax. The shipping and handling charges for this equipment is also not taxed.

“My business, L---, LLC, will be renting and selling a L---U--- kneescooter, which is an alternative to using crutches for people with foot and ankle injuries. Those renting or buying this device will be required to have a medical prescription for it.

“I believe this device falls under []Sales and [Use Tax] Regulation 1591.2, which includes crutches and walkers as non-taxable items. I have attached information describing this device. Will you please send me the appropriate paperwork stating that it is tax-exempt so that I may have it on file?

“The website for the company for whom I am a distributor is [www.aL---U---.biz\[.\]](http://www.aL---U---.biz[.])”

Discussion

As a matter of introduction, except where specifically exempted by statute, California imposes a sales tax on retailers measured by a retailer’s gross receipts from the retail sale of tangible personal property in this state. (Rev. & Tax. Code, § 6051.) Although the sales tax is imposed on the retailer, a retailer may collect reimbursement from its customers if its contract so provides.¹ (Civ. Code, § 1656.1; California Code of Regulations, title 18, section (hereinafter “Regulation”) 1700.)² It is presumed that the gross receipts from the sale of tangible personal property are subject to tax until the contrary is established. Further, generally the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale. (Rev. & Tax. Code, § 6091.)

Revenue and Taxation Code section 6369.2 provides:

“Prescription wheelchairs, crutches, canes, quad canes, and walkers. There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of wheelchairs, crutches, canes, quad canes, white canes used by the legally blind, and walkers, and replacement parts for these devices, when sold to an individual for the personal use of that individual as directed by a physician.”

Subdivision (b) of Regulation 1591.2 implements Revenue and Taxation Code section 6369.2, providing in part that:

¹ Such is usually itemized on an invoice as “sales tax.”

² All references to regulations are to sections of the California Code of Regulations, title 18.

“TAX APPLICATION. Tax does not apply to the sale or use, including leases that are continuing sales and purchases, of *wheelchairs; crutches; . . . [and] walkers . . .* when sold to an individual for the personal use of that individual as directed by a licensed physician. Electric three-wheel *scooters* that are similar in both design and function to a conventional electric wheelchair, qualify as a wheelchair for the purposes of Revenue and Taxation Code section 6369.2. When the scooters are sold or leased to an individual for the personal use of that individual as directed by a licensed physician their sale or use qualifies for an exemption from tax.” (Emphasis added.)

The knee scooter is marketed as an alternative to crutches for individuals with foot or ankle injuries. In actuality, the knee scooter is similar in function to wheelchairs, crutches, and walkers, as the knee scooter assists the mobility of a user like these other types of equipment. According to the taxpayer’s “To Whom It May Concern” letter to doctors and other health professionals, the knee scooter:

“. . . is a durable medical equipment . . . option that allows freedom to a patient otherwise restricted to crutches for a foot or ankle injury. The device . . . allows patients to continue a level of activity that is unparalleled by other alternatives. The [knee scooter] utilizes a patient’s good foot to propel the ‘knee scooter’ while allowing a comfortable resting place for a cast. The device can be of significant assistance for diabetics with Charcot Joint Disease. Of concern to doctors whose patients have Charcot Joint Disease is assuring the patient is non-weight bearing while at the same time protecting the non-injured leg from excessive weight-bearing. Crutches are unsatisfactory, sometimes resulting in accidents and/or in complications for the unaffected foot. In the past, diabetic patients with Charcot Joint Disease have often had no alternative but a wheelchair. Placing patients in wheelchairs can put them at additional risks for further serious medical problems. The [knee scooter] offers a reasonable, inexpensive option.

“This device can also be used for patients that must be non-weight bearing post foot reconstructive procedures, including bunionectomies, fusions, and other surgeries. The critical benefits of the [knee scooter] are the patient’s increased mobility without unacceptable weight bearing on the uninjured leg. The device can also be used with patients who have traumatic fractures and injuries when resting the affected foot or ankle is important.”

Based upon the description above then, the knee scooter is an alternative to crutches for persons with foot or ankle medical problems. (Rev. & Tax. Code, § 6369.2; Reg. 1591.2(b).)

As such, the knee scooter qualifies for exemption from tax if it also meets two additional requirements: (1) that the knee scooter be sold to an individual for that individual’s personal use; and

(2) that the individual's purchase of the knee scooter be directed by a licensed physician. (Rev. & Tax. Code, § 6369.2; Reg. 1591.2(b).) In order to ensure that the rental or sale of a knee scooter meets this criteria, a retailer should obtain a written statement from either the customer or the physician that the knee scooter is purchased for the personal use of the customer as directed by a physician. Further, this statement should be retained by a retailer in its records. (Sales and Use Tax Annot. 425.0355 (10/25/85).)

ASE:ds