



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

February 10, 1993

Ms. K--- K---
G--- M--- Corporation
XXXX --- Road
P.O. Box XXXXX
---, --- XXXXX-XXXX

BURTON W. OLIVER
Executive Director

Re: SZ -- XX-XXXXXX
Sales Tax on Medical Supplies

Dear Ms. K---:

I am responding to your latest letters to me, these dated December 21, 1992 and January 7, 1993. You asked if sales or use tax applies to the sales by your company ("GMC") of certain medical items.

OPINION

In our previous correspondence I have discussed the legal principles governing the prescription medicines exemption from sales and use tax provided by Revenue and Taxation Code Section 6369, interpreted and implemented by Regulation 1591, and so for the sake of brevity will not repeat it here. (Unless otherwise stated, all further statutory citations are to the Revenue and Taxation Code.) Please remember that, as a rule, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines. (Reg. 1591(c)(2).)

Based on the above standard, we conclude as to the items at issue as follows:

A. Letter of December 21, 1992.

1. Ligation Clip Applier. "We have previously been informed that a ligation clip is exempt. The applier is a reusable instrument utilized to put the clip in place. The clip is put on the blood vessels to connect them and remains in the body." This is a reusable item of durable medical equipment ("DME") which facilitates treatment and so is considered a device, etc., excluded from the definition of the term medicine under Regulation 1591(c)(2). Tax applies to sales of this item.

2. Umbilical Cotton Tape. "This is tape which is put on the baby's umbilical cord to seal it and therefore facilitate the healing process." It is in the nature of a bandage or dressing which is specifically excluded from the definition of a medicine under Regulation 1591(c)(2). Its sales are taxable.

3. Nebulizer. "This is a device that facilitates the breathing process. The nebulizer mixes oxygen with medicine and results in the patient inhaling medicated air. ... This item is only utilized by one patient and it is disposable. It can include a mouthpiece, tubing and mask. This item differs from a humidifier in that a humidifier only adds moisture to a room. No medicine is utilized plus it is not utilized by one patient, it is utilized for a whole room." Devices that merely enable a patient to breathe using the body's own breathing mechanism do not qualify for the medical oxygen delivery system exemption. The nebulizer is a method of delivering medicine to the patient, thus is a device excluded from the definition of medicine by the above authority. Its sales are taxable.

4. Nylon Swim Supporter. "This is a jock strap. However, the hospital purchases this item to provide support for hernia patients. It is utilized to facilitate the healing process." It appears that this device would qualify as an orthotic device designed to be worn on the person of the user as a support for the body structure. (Reg. 1591(b)(4).) Sales of such items to hospitals are exempt from tax under Regulation 1591(a)(4).

5. IV Solution. "This is the prescribed solution utilized during intravenous procedures. It can be a nutrient, water or a medicine. However, it must be prescribed a patient to receive." We have previously concluded that such solutions are medicines under Regulation 1591(b)(1) that when furnished as described in Regulation 1591(a) are exempt from tax. (Annot. 425.0480.)

6. Saline Solution. "This is a salt water solution, administered through the intravenous process, that must be prescribed for a patient to receive." See Paragraph 5.

7. Sodium Chloride Irrigation Solution. "This is a solution that does not have to be prescribed. It is utilized to clean wounds." See Paragraph 5.

8. Reagents. "This is an item utilized for diagnostic purposes. An example would be a test strip that is dipped in urine and turns a certain color if a particular substance is present. Perhaps the strip would turn blue if sugar level is normal but turns purple if sugar level is high. Reagents can be in the form of test strips or bottles of the solution." We have previously determined that reagents applied to tissue or fluid samples taken from the body are not applied "to the body" and so do not qualify as "medicines" under Regulation 1591(b)(1). Sales of such items are subject to tax. (See, former Annot. 425.0540, withdrawn because product no longer on market.)

9. Tracheostomy and Colostomy Care Kits. "The state has previously ruled that these kits are exempt when they contain the supplies required by the patient to administer self care. The state concluded that these kits fall under the 'necessary and related supplies' language found in section 6369(g) and would be considered exempt. However, we sell these kits to hospitals and nursing homes. Would these kits also be exempt when sold to these entities?"

I have researched our records and cannot find a letter from the Legal Division to you on this subject and so am unable to trace the source of your information. It may not, however, be completely accurate. Without a description of the kits sold by GMC, I can only comment on trays and kits in general. It is well-established that tax applies to the entire price of a tray or kit which contains taxable and exempt items unless the price of the kit is allocated between the taxable and the exempt items. (Annots. 425.0510 & 425.0840.) Thus, if GMC's kits contain only exempt items, the entire price is exempt from tax. Otherwise, it is all or partially taxable depending on whether the price is allocated between taxable and exempt items. To answer your actual inquiry, though, nursing homes maintaining licensed nursing beds and a medical staff are hospitals for the purposes of the medicine exemption. (Annot. 425.0060.) Thus sales of medicines to hospitals and such nursing homes are exempt from tax under Regulation 1591(a)(4).

B. Letter of January 7, 1993.

1. Disposable Skin Staple Remover. "... This item is used to remove skin staples." As a piece of DME used to treat the patient, it is an appliance or device under Regulation 1591(c)(2). Sales of these items are subject to tax.

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

Sincerely,

John L. Waid
Tax Counsel

JLW:es