



STATE BOARD OF EQUALIZATION

January 22, 1986

Mr. R--- M. W---, General Partner
F--- C--- M--- E---
XXXX --- --- Avenue
---, CA XXXXX

Dear Mr. W---:

Your letter of October 29, 1985 to the Board of Equalization has been referred to me for a response. You request that the sale of F--- C---'s Medi Lift Chair by --- be declared exempt from tax pursuant to Sales and Use Tax Regulation 1591(k).

Specifically, you write that your company deals exclusively in the sale and distribution of a Medical Lift Chair to recipients of Medicare and Medi-Cal who medically qualify for the chair by Medicare/Medi-Cal guidelines when ordered by licensed doctors on a prescription basis. You write that the lift chair allows the client to stand or sit and become mobile as their disease or condition allows. You've enclosed a brochure that describes the chair. The brochure indicates that the function of the chair is to mechanically raise a seated person to a standing position or to gradually lower a standing person into a seated position.

You indicate that your tax consultant has visited our office as well as the Board's district office in Long Beach for the sole purpose of defending a tax-exempt status for the sale of the chair under Regulation 1591. You indicate further that your consultant was advised by both offices that the chair had no category, but more closely fit the description of items in Regulation 1591(k) due to the mobility provided by wheelchairs, crutches, canes, quad canes, and walkers. For these reasons, you are requesting that the sale of the chair be considered exempt from tax pursuant to Regulation 1591(k).

Except where the sales are specifically exempted by statute, sales tax applies to the gross receipts of retailers of all retail sales of tangible personal property in this state (Rev. & Tax. Code § 6051). Section 6369(a) of the Code exempts from tax the sale of medicines, as defined. Section 6369(b)(2) provides that the term "medicines" does not include "articles which are in the nature of ... apparatus, contrivances, ... devices, or other mechanical ... equipment" In addition, section 6369.2 exempts from tax the sale of "wheelchairs, crutches, canes, quad canes, and walkers" Sales and Use Tax Regulation 1591 interprets and applies Revenue and Taxation Code section 6369.

Applying the preceding criteria to the Medi Lift Chair described in your letter, we are of the opinion that the sale of the chair is not exempt from tax pursuant to Regulation 1591(k). Regulation 1591(k), and section 6369.2 upon which the regulation is based, describes items that are used to assist their users as they move from one point to another. On the other hand, the chair, described in your letter and the attached brochure, merely facilitates the ability of the user to get into and out of a chair. The chair does nothing to assist the mobility of the user once he or she is in or out of the chair. Therefore, the sale of the chair is not exempt as a wheelchair, crutch, cane, quad cane or walker since the chair does not perform the same function as these items.

It is our opinion that the chair can more accurately be described as an article which is in the nature of an apparatus, contrivance, device or other mechanical piece of equipment and therefore expressly excluded from the definition of "medicine" pursuant to section 6369(b)(2). Therefore, since the sale of the chair is not exempt pursuant to any exemption in the Revenue and Taxation Code, its sale is taxable pursuant to section 6051.

If you have any further questions, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr

cc: -- -- Compliance (RFG)