

**STATE BOARD OF EQUALIZATION**

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July 14, 1978

Mr. R--- J. F---
F--- and A---
XXX --- Lane
--- ---, CA XXXXX

Dear Mr. F---:

This is in response to your letter of June 12, 1978, and our telephone conversation of July 16, 1978, concerning the correct application of tax to certain medical devices.

As we understand it, you have been informed of many additional products which you believe might be classed within the terms of Regulation 1591(i). These products fall into six generic categories:

1. pleural cavity evacuators
2. general evacuators
3. cranial evacuators
4. bronchial tubes and evacuators
5. stomach evacuators
6. embolectomy catheters

The above listed items are described as follows:

1. Pleural Cavity Evacuators. (Pleur-evac, Thoroseal, Heimlich Evacuator)
Following open chest surgery or under indication of fluid build up in the chest region, these devices are used to remove waste, mucus and post-operative fluid build up on the chest cavity. A perforated tube is attached to a tube which goes to a pumping device. The tube is inserted into the surgical opening during surgery and may remain in place for several days. At required intervals, trained medical professionals will activate the pump in order to suck out the natural waste fluid.

2. General Evacuators. (Hemovac) According to the brochure which you enclosed for our consideration, the Snyder hemovac is a disposable portable device used for closed-wound suction. This evacuator is used in much the same fashion as the pleural evacuator with the exception of the part of the body into which the tube is placed.

3. Cranial Evacuators. (Jackson-Pratt Reservoir, Flat Drain, Pudenz Reservoir) Most frequently used following neuro-surgery, these evacuators are similar in function and purpose, but different in design than other evacuators. These devices are also used temporarily in lieu of hydrocephalus valve implants.

4. Bronchial Tubes and Evacuators. (Lanz Tracheostomey Tubes, Tracheal Suction Kits) These tubes are implanted into the tracheal passage for short to long periods of time to allow for the passage of both air and fluid from the lungs. The suction kits are also fitted with "cuffs" which are collecting bags for fluid waste.

5. Stomach Evacuators. (Sump Drain, Stomach Tube) These tubes and drains are attached to various bile bags and collectors when a patient requires evacuation of the various part of the stomach and digestive tract.

6. Embolectomy Catheters. These catheters are used to remove clotted blood from arteries and veins in patients being treated for embolisms. As we understand it, these catheters are primarily utilized during surgery.

Additionally, you wish to know whether externally worn pacemakers and their temporary leads, worn on a patient to assist the heart in its pacing process, qualify as "medicines" under Regulation 1591(b)(5).

Sales and Use Tax Regulation 1591(i) provides that:

" . . . any appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste, shall be deemed to be dispensed on prescription within the meaning of section 6369."

We are of the opinion that pleural cavity evacuators, general evacuators, cranial evacuators, bronchial tubes and evacuators and stomach evacuators qualify as appliances necessary as the result of a surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste as provided in Section 6369.

We note, however, that in order for these items to qualify under Section 6369(f), they must be used in post-operative situations. Tax will apply when these items are used temporarily during surgical procedures. Tax will also apply if these items are used for the administration of medication rather than for the removal of wastes.

Similarly, embolectomy catheters would qualify under Section 1591(i) if they are utilized in post-operative situations; however, as we understand it, they are only utilized as an adjunct to surgical procedures, thus tax will apply to their sale.

We have previously concluded that externally worn pacemakers and their temporary leads do not qualify as “prosthetic” devices under Revenue and Taxation Code Section 6369(c)(4) as they are not fully worn on the body of the user. The temporary leads will qualify under Section 6369(c)(2) if they are implanted in the human body.

You have also inquired about the correct application of tax to the following items:

- (1) Electrode jelly – Used as a conductive agent to aid in the placement of electrodes on the human body. (non-prescription)
- (2) Spray on bandages – A spray that, when applied to the human body, forms a “bandage” on the skin.
- (3) Instant ice bags.
- (4) Silver Nitrate-Potassium Nitrate Application Stick – When broken, the chemicals become hot and act to cauterize a wound.

We are of the opinion that none of the above items qualify as “medicines” as that term is defined in Regulation 1591.

- (5) Walking heels – Utilized in conjunction with leg or ankle casts.

We have previously determined that walking heels were taxable because of the provision in Regulation 1591(b)(4) which provided “that orthopedic shoes and supportive devices for the foot are not exempt unless they are an integral part of a leg brace or artificial leg.” We have reexamined our position and determined that walking heels come within the definition of the term “medicines” under Regulation 1591(b)(4) since they are necessary to the functioning of leg and ankle casts.

- (6) Head Halters – Various types of head halters have been brought to our attention. One type consists of straps which are joined in some manner at the top of the head and hung to a bar which is attached to a bed or some other object. We have concluded that this type of head halter is not exempt under Regulation 1591(b)(4) because it is not fully worn on the person of the user. There are, however, some head halters which are fully worn on the person of the user and would be exempt under this section.

Elastoplast and Pegolastic – A type of elastic bandage with adhesive.

If the purpose of the above item is to brace, support, or correct the body structure in the same manner as other elastic bandages, they would qualify as “medicines” under Regulation 1591(b)(4).

Iota form and Xeroform – A type of medicated gauze bandage.

We would like to have more detailed information on the above mentioned product; however, we can tell you as a guideline that the advice previously given, that medicated gauzes, pads and other dressings qualify as “medicines” under Regulation 1591 if the medication itself qualifies as a medicine is still valid.

If you have further questions about the above items, please write this office.

Very truly yours,

Mary C. Armstrong
Legal Counsel

MCA:js

bc: Audit Evaluation and Planning Unit.