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**STATE BOARD OF EQUALIZATION**

916-324-5589

June 1, 1990

Dear X-----,

This is in response to your letter of March 29, 1990. You have requested our opinion regarding the correct application of tax to the orthopedic products your company sells and distributes.

California Sales and Use Tax Law imposes tax on the sale or use of tangible personal property in this state, unless such sale or use is otherwise exempt from taxation. Revenue and Taxation Code section 6369 exempts from tax the gross receipts from the sale, storage, use or other consumption in this state of medicines. "Medicines" as defined in section 6369 means and includes:

"... 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."

Section 6369(c)(1) and (2) provide that the term "medicines" includes sutures, whether or not sutures are permanently implanted, bone screws, bone pins, pacemakers, and other articles permanently implanted in the body to assist the function of all or any part of any natural organ, artery, vein or limb.

Section 6369(c)(3) provides that the term "medicines" includes orthotic devices or replacement parts for such devices, designed to be worn on the person of the user as a brace, support, or correction for the body structure.

Notwithstanding the above analysis, as to tax exempt medicines, the following items are specifically excluded from the term "medicines" unless they come within one of the exceptions listed above: "splints, bandages, pads, compresses, supports, non-medicated dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or component parts thereof."

Also excluded from the term "medicines" are orthopedic shoes and supportive devices for the foot unless they are an integral part of a leg brace or artificial leg or a "custom made biomechanical foot orthoses."

A “custom-made biomechanical foot orthoses” means an individually prescribed foot orthosis which is custom fabricated over a neutral or near neutral subtalar joint with a pronated midtarsal joint position positive plaster model of the patient's foot, which model, when the cast is modified to support the osseous position of the forefoot in relationship to the rear foot, embodies the angular osseous relationships of the anterior and posterior portions of the foot.

We have reviewed the items listed in your letter. The following items qualify as exempt “orthotic” devices under section 6369(c)(3) when they are sold to a physician for treatment of a patient or sold directly to a patient pursuant to a doctor's order or prescription:

#### Dricast Orthopedics

Miracle Knee Supports - TH109, TH209, TB309, TH409, TH509, TH609  
Neoprene and Felt Buttress Pads - TH19, TH 191  
Stabilizer Brace - TH192  
Brace Hinge w/hyperextension stop - TH193B  
Interior Patellar Pull Component - TH193B  
Lateral Release Pad - TH195  
Lumbro-Sacral Back Supports – TH101, TH201, TH301  
Rib Belt - TH401  
Abdominal Support - TH501  
Thigh Calf Support - TH104  
Magic Wrist Support - TH107  
Ankle Elbow Support – TH108A & B  
Tennis Elbow Support – TH108C  
Wonder Straps - TH197 - exempt, if sold as part of a support item.  
Prrddure Dots - TH198 - Exempt, if sold as part of a support item.  
Flexible Ice Inserts - FI-4 - Exempt, if sold as part of a support item.

#### Ezy Wrap (Professional Products Inc.)

840 Ankle Brace  
Arm Sling - #2341  
Velcro Elastic Bandages - #4792  
Wrist/Forearm Supports - #901, 903, 905, 907  
Thumb/Finger Splints - #2552  
Hinged Knee Brace - #1267

#### MediUSA

Genumedi - Elastic Knee Support  
Levamedi - Elastic Ankle Support  
Epicomed - Elastic Elbow Support

OMNI Scientific

OMNI II Bi-Lateral Knee Support  
Anderson Knee Stable Knee Brace  
OS-5 Off-The Shelf Custom Knee Brace  
TS-7 Custom Knee Brace

Orthoglass

Orthoglass Fiberglass Splinting (Casting) Material  
Orthoglass Elastic Bandage

Swede-O Universal

Swede-O Padded Ankle Support

The following items do not qualify as exempt orthotic devices. Tax will therefore apply to the sale of these items.

Orthopedic Product Sales

Healers Heel Silicone Cups

Kool Kubes

Kool Kube Ice Cubes and Mats

Orthoglass

Fiskars Razor-edge Scissors

Parker Medical Supply

UCO 4PP Heal Bed foot Orthotic System  
UCO Pre-Molded Foot Orthotics

Chattanooga Corporation

Viscolas Foot Orthotics –  
Full-Cushion Insole  
Heel Cushions  
Heel Spur Cushions  
Metatarsal Pads  
Longitudinal Arch Pads  
Corrective Heel Wedges  
Neuroma Pads

Toe Crest Pads  
Viscolas Hand Exerciser  
Viscolas Waffle Pattern Fabric

If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong  
Senior Tax Counsel

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