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STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION
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April 15, 1994

Mr. REDACTED TEXT
Controller
REDACTED TEXT

Re: SR REDACTED TEXT
Central Supply Charges
Application of Tax

Dear Mr. REDACTED TEXT:

I am answering your letters to me dated February 28 and March 15, 1994. In the February 28 letter you ask for an opinion on the application of sales tax on sales of non-administered central supply items. You indicate that all billing is done on a form which summarizes all departmental charges which the patient incurs. Neither the patient nor the insurer receives an itemized bill. In the March 15 letter you ask for an opinion this issue as well as on the taxability of various items of durable medical equipment. You attached a voluminous list of items along with copies of flyers showing the items.

1. Central Supply Items.

Regulation 1503, provides, in part, as follows:

"... Tax applies to charges made by institutions to residents or patients for appliances, dressings, and other supplies, except medicines subject to exemption."

(Reg. 1503(b)(2).)

Hospitals are primarily providers of services and, as such, are consumers or property they use in rendering that service to their patients. The term "other supplies" includes property for which the hospital has made a separate charge to the patient and also for which title and possession has been passed to the patient. It does not include consumable supplies. Such supplies are consumed by the hospital in rendering its services and title or possession of the property does not pass to the patient. Consequently, hospitals are consumers of such supplies. Thus, under the regulation, if there is no itemized billing, then the hospital is considered the consumer of the property. It may not purchase such supplies for resale. As a result, its suppliers must report and pay tax on their sales of those supplies to the hospital and may collect reimbursement from the hospital at that time.

(Civ. Code. § 1656.1.). We note that there would still be no sale if the patient never received possession and control of the property no matter how the billing.

2. Durable Medical Equipment.

Regulation 1591(b)(1) defines "medicine" to "mean and include 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." However, Regulation 1591(c)(2) adds that "medicines" do not include "articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof." (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) As a rule, then, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines.

As noted above, where the patient never gets possession and control of the item, there is no sale to him no matter what the billing. Most of the items on your list and pictured in the flyers are items used by hospital personnel in the performance of their duties - e.g., surgical masks, limb holders, incontinence bed pads, etc. These items are consumed by the hospital in the performance of its services, with the tax consequences being the same as those in Paragraph 1. You indicate, however, that some items, such as eggcrate mattresses, do go home with the patient. Presumably, they are not returned. If so, they are sold to the patient and may be purchased free of tax for resale, but the hospital must pay tax on the gross receipts from its subsequent sales to the patients. Otherwise, the taxable event is the sale to the hospital.

For your information, I have included a copy of Regulation 1503. 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

Enclosure: Reg. 1503

cc: GH - District Administrator