



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
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July 1, 1988

Mr. D--- F. E---, President
S--- D---, Inc.
XXX --- --- Drive
--- ---, CA XXXXX

SR -- XX-XXXXXX

Dear Mr. E---:

Your May 5, 1988 letter to Tax Counsel Herb Cohen has been referred to me for a reply. You request an opinion concerning the correct application of tax to certain sales of pharmaceutical products.

As I understand the facts, the pharmaceutical products in question are outside the prescription drug classification, but they are products sold by licensed dermatologists to their patients specifically for the treatment of skin disorders, or the prevention of adverse skin conditions. You list the products as follows:

“Skin Cleansers and Antiseptics

Nu-Soap Lotion (Cetaphil)
Chlorhexidine Gluconate 4% Cleanser (Hibiclens)
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Antipsoriatics

Coal Tar Solution 20% USP
Psorigel Solution

Antibiotics

Neomycin, Polymyxin Bacitracin Ointmen (Neosporin)

Antiseborrheic

Selenium Sulfide Lotion Shampoo 1% (Selsun Blue)

Antiviral

Zostrix Cream 0.025%

Emollients

Therapeutic Bath Oil (Alpha Keri)

Lubriderm Lotion (unscented)

Eucerin Cream

Aquacare/HP Cream

Lacticare Lotion

Minon Moisturizer

Keratolytics

Salicylic Acid 40% Plaster

Sunscreen

Neutrogena paba free

Ti-Screen SPF 30"

You request an opinion as to whether the dermatologists' gross receipts from the sale of these products to their patients for the treatment of those patients are taxable.

California Sales and Use Tax Law imposes a tax on the gross receipts of retailers from the retail sale of tangible personal property in this state unless such sale is otherwise exempt or excluded from taxation by statute (Rev. & Tax. Code § 6051). Revenue and Taxation Code Section 6369(a)(2) exempts from tax medicines furnished by a licensed physician, surgeon, dentist, or podiatrist to his or her own patients for the treatment of that patient. The term "medicines" is defined in Section 6369(b) 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."

Applying the above criteria, it is our opinion that the listed pharmaceutical products which treat skin disorders or prevent adverse skin conditions are medicines pursuant to Section 639(b) of the Revenue and Taxation Code. Accordingly, the gross receipts from a dermatologist's sale of these products to his or her patients for the treatment of those patients are exempt from tax pursuant to Section 6369(a)(2).

I hope the above information is helpful. Enclosed for your review and reference is a copy of Sales and Use Tax Regulation 1591 (Prescription Medicines) which interprets and applies Revenue and Taxation Code Section 6369. If you have any further questions concerning this topic, please do not hesitate to contact this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr

Enc.