

**STATE BOARD OF EQUALIZATION**

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May 17, 1984

B--- B--- Corporation
Attention: D--- K. R---
P.O. Box XXXX
--- ---, CA XXXXX

RE: SR -- XX-XXXXXX

Dear Ms. R---:

Your inquiry to Mr. Peter R. Elash, Tax Auditor IV, of our [---] District Office has been referred to me for reply.

We understand that your company distributes medical supplies to medical supply houses and to hospitals. You ask our opinion as to the correct application of tax to the sale of various medical supply items. A description of each of the products you have inquired about and our opinion as to the application of tax follows:

1. Liquid castile soap – used as an enema cleansing agent. This product is introduced into the body as part of the enema solution.
2. Heimlick chest drain valve – is a valve which is used to regulate the drainage of fluid from the pleural cavity of the human body. This item is used in conjunction with the underwater drainage set, item 3, described below.
3. Underwater drainage set – is a pleural cavity evacuator, i.e., a drainage unit for post-surgical removal of waste, mucus, and post-operative fluid build up in the chest cavity of the human body.
4. Silicone drain – is a catheter which can be used to drain waste from the human body.

5. Male cot drain – is a catheter which is inserted into the human body through a natural opening and aids in the elimination of urine.
6. Prefilled cup .45 nss 150 ml – we understand that this item is used to help patients breath. This device is placed over the patient’s mouth and nose or can be attached to the patient when a treachotomy has been performed.
7. Prefilled 300 with humid adapt – apparently, this item is used for patient care to ease breathing with a bronchial tent. Although this item can be used prior to surgery, it is primarily used post-surgically.

Item 1. Liquid castile soap

We have previously decided that enema preparations qualify as exempt medicines under Sales and Use Tax Regulation 1591. Therefore, tax does not apply to the sale of liquid castile soap for use as an enema preparation.

Item 2 & 3. Heimlick chest drain valve, and Underwater drainage set

We have previously decided that both the Heimlick chest drain valve and the underwater drainage set qualify as exempt medicines under Regulation 1591(j), because they are appliances and related supplies 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. Therefore, the sale of these products is not subject to tax. We wish to emphasize, however, that in order for either of these products to qualify as medicines under Regulation 1591(j), they must be used in post-operative situations. Tax will apply when the items are used temporarily during surgical procedures. Tax will also apply if such items are used for administration of medications rather than for removal of waste from the human body.

Item 4. Silicone Drain

It is our opinion that this product qualifies as an exempt medicine and is not subject to tax, provided it is used to drain waste as a result of an artificial opening (as opposed to a natural opening) created in the human body, as required under Regulation (1591(j). (See our answer to Items 3 & 4 above.)

Item 5. Male cot drain

In our view, this item does not qualify as an exempt medicine. Therefore, tax applies to the sale of this product. The exemption from tax provided under Regulation 1591(j) is inapplicable with regard to the male cot drain, since it is used to drain human waste from a natural opening, as opposed to an artificial opening.

Items 6 & 7 Prefilled cup .45 nss 150 ml, and prefilled 300 with humid adapt

We are unable to determine the exact nature of the products in question from the given description, and therefore, we cannot render our opinion as to whether the sale of these items is exempt from taxation. However, since both of these products are described as being "prefilled" and are used in respiratory therapy, it is possible that they may in fact qualify as tax exempt humidifiers or nebulizers. We have previously decided that both prefilled humidifiers and prefilled nebulizers which contain and apply medicines such as sterile water qualify as tax exempt medicines under Regulation 1591. Furthermore, Section 6369.5 of the Revenue and Taxation Code exempts from tax any medical oxygen delivery system, and related items which are necessary for the delivery of oxygen to the person, such as masks and humidifiers. Therefore, if you wish to provide us with a more detailed description of the products in question, we will provide you with our opinion on their taxation.

If you have any further questions, please write this office.

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba