

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-3828

October 27, 1989

R--- J---, President
S--- S--- R---
XXXX --- --- Way
---, California XXXXX

SR --- XX-XXXXXX

Dear Mr. J---:

Your letter of September 20, 1989 has been referred to the undersigned for reply. You have requested our opinion as to whether a dermatologists' gross receipts from the resale in California of certain of your non-prescription pharmaceutical products (as described on the attached) to their patients, for the treatment of such patients, are subject to California sales tax.

Your request was initiated by a customer-physician (dermatologist) who currently resells the subject products to her patients. This physician has referenced a letter from Tax Counsel, Robert J. Stipe, which appears to support an exemption for products which are identical or very similar to the products sold by S--- S--- R--- (SSR).

All of the products sold by SSR were formulated by a dermatologist and are designed for individuals with sensitive skin. To avoid allergic reactions, these products contain no fragrances or dyes, and only minimal amount of preservatives. Many of the products contain active sunscreen ingredients. These products are useful, and in some cases, necessary to mitigate and prevent dermatological conditions such as contact dermatitis, seborrhea, chronic dry skin, and hypersensitivity to the sun due to photo reactive drug use (i.e., psoralens, Retin A, etc.) and/or genetic predisposition.

The products and their descriptions are as follows:

I. CLEANSING AGENTS

1. Cleansing Lotion - - L--- S--- Cleansing Lotion is a gentle, oil free cleanser. It is formulated to effectively dislodge oil, dirt and makeup from the face. It is water soluble and can be rinsed off easily with tepid water.
2. Facial Soap - - L--- S--- Facial Soap is a mild, homogenized facial soap which leaves your skin feeling soft. It is french milled to last longer and superfatted to minimize moisture loss.

II. MOISTURE LOTIONS

1. Moisture Lotion for Normal/Combination Skin - - This lotion is a light, non-greaS--- formulation recommended for reliving tightness of the skin after washing or after the application of harsh acne preparations. The ingredients assist the facial skin to retain its own natural moisture.
2. Moisture Lotion for Dry Skin - - L--- S--- Moisture Lotion for Dry Skin is a blend of lubricating moisturizers designed to be worn daily to enhance the skin's own ability to retain natural moisture. It is ideal to use under makeup and to add a youthful glow to the skin.

III. MOISTURE CREAMS

1. Superior Night Cream - - L--- S--- Superior Cream is a light, penetrating cream that can be worn day or night. This non-greaS--- formula seals in precious moisture giving lasting softness. Ideal for patients using Retin-A for anti-aging therapy to relieve dryness.
2. Extra Rich Face Cream - - L--- S--- Extra Rich Cream is a luxurious formulation of Jojoba oil and penetrating emollients designed to give thirsty, dry skin a smooth, silky feeling. Extra Rich Cream is an ideal companion product for the patient on Retin-A. It offers a buffer for the dry and irritating side effect often seen with this therapy.

IV. SUNSCREENS

1. O--- Sunscreen Moisturizing Lotion (SPF 15) - - L--- S--- O--- Sunscreen Moisturizing Lotion provides SPF 15 protection (UVB) in a non-staining, non-grease moisturizer base that can be used for the face as well as the body. This non-Paba sunscreen includes:

Cinnamate 7.5% - a UVB absorber
Oxybenzone 3% - a UVA absorber

This fragrance-free formulation can be used by women under their makeup and by men as an after shave. Apply daily and enjoy a broad spectrum sunscreen during your outdoor activities.

2. O--- II Sunscreen Lotion for Oil Skin - - L--- S--- O--- II Sunscreen Lotion for Oily Skin is a light textured lotion developed for oily, acne prone skin (SPF 15 UVB protection). It is ideal for teenage skin offering sun protection for those on Retin-A for acne therapy. It is also ideal for those on oral medications with sun sensitizing effects. This non-Paba sunscreen includes:

Cinnamate 7.5% - a UVB absorber
Oxybenzone 3% - a UVA absorber

V. MAKEUP

1. Liquid Makeup with Sunscreen - - Sheer, water based makeup – oil free Non-Paba sunscreens which include:

Titanium Dioxide – a physical block (UVA, UVB and visible light spectrum)
Cinnamate 7.5% - a UVB absorber
Oxybenzone 3% - a UVA absorber
Rose Shades: light, medium, tan
Golden Shades: light, medium, tan

L--- S--- Liquid Makeup is recommended for the oily, acne prone or combination type skin. Ideal for teenagers or adults who are on Retin-A for acne therapy or on oral medications with sun sensitizing effects.

2. Souffle Makeup with Sunscreen
Whipped, light, creamy oil in water emulsion
Non-Paba sunscreens which include:

Titanium Dioxide – a physical block (UVA, UVB and visible light spectrum)
Cinnamate 7.5% - UVB absorber
Oxybenzone 3% - UVA absorber
Shades: ivory, natural, tan

L--- S--- Souffle Cream is recommended for women who have dry skin, broken blood vessels, or dark age spots. Ideal for patients using Retin-A for anti-aging therapy. Souffle Cream stays on all day and provides excellent sun protection for outdoor sports such as golf, tennis or swimming.

3. Essential Cream Makeup with Sunscreen (SPF 15) - - Protective oil based sunscreen foundation
Non-Paba sunscreens which include:

Titanium Dioxide – a physical block (UVA, UVB and visible light spectrum)
Cinnamate 7.5% - UVB absorber
Shades: natural

L--- S--- Essential Cream provides the ultimate cover for patients with uneven complexions or post-surgical scars, yet it is mild enough to use on sensitive skin following a chemical peel or dermabrasion.

Essential Cream stays on all day, provides excellent sun protection for outdoor sports and helps maintain an optimum moisture balance.

4. After Shower Body Oil - - L--- S--- After Shower Body Oil is a unique blend of safflower oil, Jojoba oil and soothing emollients. Designed to be used on wet skin, this luxurious oil penetrates to soften, silken, protect and rehydrate the skin. L--- S--- After Shower Body Oil has been found to be excellent for dry skin, psoriatics and atopics.

You request an opinion as to whether the gross receipts from the sale of these products by dermatologists 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) 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 all of the listed pharmaceutical products which treat skin disorders or prevent adverse skin conditions are medicines pursuant to Section 6369(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).

We note however that these items must be "sold" by a licensed physician or surgeon, pharmacist or health facility (See Sales and Use Tax Regulation 6369 (a)(1) to (5)) to qualify as exempt medicines. As such, tax would apply to an "over-the-counter sale" of any of these products.

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

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

MCA:wak