

M e m o r a n d u m**425.0859**

To: --- Auditing

Date: January 4, 1985

From: Charles J. Graziano

Subject: ---

This is in reply to your memo dated October 3, 1984, wherein you request we resolve an inconsistency with regard to the staff's application of tax to the sale of "urinary incontinent supplies," i.e., devices which are used to collect urine from patients in the nonsurgical treatment of urinary incontinence.

In my letter dated October 4, 1983 to Ms. Jeannie Tindel of the California Pharmacists Association, I stated that urinary incontinence supplies do not qualify as exempt medicines under Sales and Use Tax Regulation 1591(b)(5) as prosthetic devices, nor do they qualify under 1591(j) as exempt ostomy appliances. However, as you point out, the Board has previously decided in the --- petition for redetermination (--, Hearing Officer Robert H. Anderson, 3-2-82) that urinary incontinence supplies which consist of catheters and drainage bags are exempt from taxation as prosthetic devices under Regulation 1591(b)(5).

We have further reviewed the use of these devices and now conclude that such urinary incontinence devices do qualify as exempt prosthetic devices under Regulation 1591(b)(5), provided such items are fully worn in or on the body of the user. In our view, a urinary incontinence device which is comprised of a catheter (indwelling, intermittent, external, or suction), and a collection bag, together with any connectors and caps which are necessary to complete the fluid track, and is designed to be fully worn on or in the body of the user is a nontaxable prosthetic device under Regulation 1591(b)(5) for the reason that such a device assists in the functioning of the user's bladder. In addition, it is our opinion that such items as topical antiseptic solutions, adhesives (used to hold the device in place), adhesive removers (used to remove the adhesive), and lubricants (used to insert the urinary device), qualify as tax exempt medicines under Regulation 1591 when sold under a physician's prescription for use with an exempt urinary incontinence device. In our view, however, the following items do not qualify as exempt prosthetic devices or otherwise qualify as exempt medicines under Regulation 1591, even though such items are used with exempt urinary

incontinence devices: cleaners and equipment which are used to remove contaminants from the urinary incontinence device; insertion kits which are used to insert the catheter; and irrigation syringes, which are used to clean the catheter.

CJG:ba

cc: Mr. G. J. Jugum
Mr. D. J. Hennessy