



STATE BOARD OF EQUALIZATION

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February 8, 1988

REDACTED TEXT1

Re: REDACTED TEXT

Dear REDACTED TEXT:

Your letter of December 30, 1987 has been referred to me for a reply. You request our opinion concerning the correct application of tax to your sales of a product called "Vitajet".

As I understand the facts, REDACTED TEXT is a retailer of first aid, fire and safety equipment. A review of REDACTED TEXT's application for a seller's permit indicates that REDACTED TEXT is not a registered pharmacist. REDACTED TEXT has recently been named as the exclusive agent for the sale of Vitajet. Vitajet is described in a brochure that you enclosed with your letter as an insulin injection system that injects an ultrafine stream of insulin through the skin and into the tissue under the skin without the use of a needle. Nothing penetrates the skin except the insulin.

Specifically, you write as follows:

"It is our understanding that if this product is sold with a prescription, it is not subject to sales tax.

"If, however, the product is sold direct to the end-user, without a prescription, then the normal sales tax rule applies."

Except where the sales are specifically excluded or exempted from taxation by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this state (Rev. & Tax. Code § 6051). Revenue and Taxation Code Section 6369 provides that prescription medicines are exempt from sales tax, but Section 6369(b)(2), in pertinent part, excludes from the term medicines articles which are in the nature of instruments, devices or other physical equipment. However, Section 6369(e) and Sales and Use Tax Regulation 1591(h), which interprets and applies the code, provides that the sale of insulin syringes are not subject to tax, provided the insulin syringes are furnished by a registered pharmacist to a person for the treatment of diabetes as directed by a physician. Finally, Dorland's Medical Dictionary defines a syringe as "an instrument for injecting liquids into any vessel or cavity."

Applying the above criteria, it is our opinion that Vitajet is a syringe, since it injects insulin fluid into body tissue. In general, however, syringes do not qualify as tax exempt medicines, notwithstanding the fact the syringe is prescribed by a physician, since a syringe is in the nature of an instrument, device or physical equipment pursuant to Section 6369(b)(2). An exception to this general rule applies to insulin syringes, the sale of which are exempt from tax as described above in Section 6369(3) and Regulation 1591(h). However, insulin syringes sold by REDACTED TEXT do not qualify for this exemption since REDACTED TEXT is not a registered pharmacist. Accordingly, REDACTED TEXT's gross receipts from the sale of Vitajet are subject to tax when REDACTED TEXT sells Vitajet to the end-user, whether or not that user has a prescription for Vitajet by a physician.

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). 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.

bc: Sacramento District Administrator