



STATE BOARD OF EQUALIZATION

916-445-2641

September 18, 1985

Dear X-----,

Your letter of June 26, 1985 to X----- of our Orange County District Office was referred to us on August 5, 1985 for reply. You request our opinion as to the correct application of sales tax to the sale of the "Passy-Muir Trach Valve," distributed by X----- . You have provided for our review literature describing this device.

We understand that the Passy-Muir Trach Valve is a prescription device which attaches to a tracheostomy tube to temporarily block the passage of air to the lungs, allowing tracheostomy patients to speak. The Passy-Muir Trach Valve will only be sold to medical facilities and physicians.

California Sales and Use Tax Law imposes a tax on the sale of tangible personal property in this state, unless such sale or use is otherwise exempted from tax. Section 6369 of the Revenue and Taxation Code and Sales and Use Tax Regulation 1591 which interprets and applies this statute provides that prescription "medicines" are exempt from sales and use tax. Although an item, device, or apparatus may be prescribed by a physician for treatment of his patient, for the sale to be exempt from tax, the item must qualify as a "medicine" under Section 6369 and Regulation 1591. Relevant here is Section 6369 (g) which provides that the term "medicines" includes:

"(g) ...any appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste, shall be deemed to be dispensed on prescription within the meaning of this section."

In our view, the Passy-Muir Valve qualifies as "related supplies" under Section 6369(g) for the reason that the Passy-Muir Valve is designed to be worn in conjunction with a tracheostomy tube which is necessary as a result of an artificial opening created in the human body for the elimination of natural waste. Therefore, it is our opinion that sales tax does not apply to the sale of the Passy-Muir Valve.

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

Very truly yours,

Donald J. Hennessy
Tax Counsel

DJH:ba

Bc: Orange County – District Administrator
Ms. Vickie Owen