

Memorandum

To: Chief
Tax Policy Division (MIC:92)

Date: June 29, 2016

From: Erin Dendorfer
Tax Counsel
Tax and Fee Programs Division (MIC:82)

Subject: Regulation 1506 – Hearing Aid Accessories and Component Parts
Assignment No. 15-525

On September 22, 2015, you requested a legal opinion regarding the application of tax to hearing aids, component parts, and accessories sold by persons licensed as hearing aid dispensers. Specifically, you asked that we review Sales and Use Tax Annotations 360.0006, 360.0110, 360.0115, and 360.0146. You suggest that we issue a new opinion for annotation that would provide guidance regarding hearing aid accessories and component parts that come within the definition of “hearing aid” under Regulation 1506, and regarding the application of tax to these items when sold by a licensed hearing aid dispenser.

Your request states that you have received questions from taxpayers regarding the above annotations, which appear to be contradictory and inaccurate in terms of the accessories and component parts that come within the definition of “hearing aid.” You believe that wax guard systems, hearing aid domes, and eartips come within the definition of “hearing aid.” You also state that certain assistive listening devices that, when worn on the body, increase and enhance the functionality of the hearing aid should qualify as hearing aid accessories. Our opinion will address each of these items individually.

Revenue and Taxation Code section 6018.7 provides that licensed hearing aid dispensers are consumers of hearing aids furnished or sold by them. Tax applies with respect to the sale of such products to licensed hearing aid dispensers. (Rev. & Tax. Code, § 6018.7.) Regulation 1506, subdivision (g), provides that licensed hearing aid dispensers are persons licensed as hearing aid dispensers by the Department of Consumer Affairs, Hearing Aid Dispensers Examining Committee.

Although Regulation 1506 provides what the term “hearing aid” includes, it does not specifically define what qualifies as a “hearing aid.” Article 8 of the Business and Professions Code, which regulates the activities of licensed hearing aid dispensers, provides a clear definition of what constitutes a “hearing aid.” It states:

“Hearing aid” means any wearable instrument or device designed for, or offered for the purpose of, aiding or compensating for impaired human hearing.

(Bus. & Prof. Code, § 2538.10, subd. (d).)

This definition, coupled with Regulation 1506, subdivision (g), provides more clear guidance regarding how licensed hearing aid dispensers should apply tax to hearing aids and other items. Regulation 1506, subdivision (g) states that “hearing aid” includes:

[A]ny necessary accessory or component part of the hearing aid which is fully worn on the body of the user such as cords, connector tubing, ear molds, or batteries, whether the part is sold or furnished separately or in conjunction with the hearing aid. The term also includes replacement and repair parts.

Taken together, these two provisions explain that a hearing aid is an instrument that is fully worn on the body that aids or compensates for impaired human hearing. (Reg. 1506, subd. (g), Bus. & Prof. Code, § 2538.10, subd. (d).) Hearing aid also includes any cords, connector tubing, ear molds, batteries, and replacement or repair parts, that are fully worn on the body. (Reg. 1506, subd. (g).) Devices that are not fully worn on the body would not qualify as hearing aids or necessary accessories or component parts of hearing aids. With this definition in mind, we will address the specific items included in your request.

Wax Guard Systems

Wax guard systems are systems that include both a wax guard and the means to remove a used wax guard and replace that wax guard with a new wax guard. The wax guard itself becomes part of the hearing aid, which is fully worn on the body. Therefore, the wax guard qualifies as a “hearing aid” under Regulation 1506, subdivision (g). The system that enables the hearing aid user to install the wax guard qualifies as a repair part because it is a specialized tool that is used to remove the old wax guard and install the new one. (Reg. 1506, subd. (g).) Licensed hearing aid dispensers are the consumers of these items. (*Ibid.*)

Hearing Aid Domes and Eartips

Hearing aid domes and eartips are disposable ear pieces that connect to the hearing aid’s speaker or thin tube and are inserted into the ear to aid the hearing of a person with hearing impairment. They are fully worn on the body. Therefore, these items qualify as “hearing aids” under Regulation 1506, subdivision (g). Licensed hearing aid dispensers are the consumers of these items. (*Ibid.*)

Assistive Listening Devices

There are several types of assistive listening devices. All assistive listening devices aid a person with hearing impairment. Some devices, however, are not wearable. Because the definition of “hearing aid” includes only wearable devices that are fully worn on the body, only those assistive listening devices that are worn on the body will be considered hearing aids. (Reg. 1506, subd. (g).) Devices that transmit acoustic or electronic signals from a radio, television, or other similar source via radio, infrared, or electromagnetic energy would not qualify as hearing aids because they are not worn on the body. (*Ibid.*) A transmitter that is fully worn on the body of a person speaking to a person with hearing impairment or a receiver that is fully worn on the body

of a person with hearing impairment would qualify as hearing aids. (*Ibid.*; see, e.g. Annotation 360.0110.) Licensed hearing aid dispensers are the consumers of these items. (Reg. 1506, subd. (g).)

Other Hearing Aid Supplies

We also note that products used to clean or dry hearing aids do not fall within the definition of “hearing aid” because they are not worn on the body and are not necessary to repair any part of the hearing aid nor do they qualify as replacement parts. (Reg. 1506, subd. (g); see also, Bus. & Prof. Code, § 2538.10, subd. (d).) In addition, battery removal kits, ear wax removal kits, battery testers, otoscopes, telephone ear pads, and foam ear plugs are similarly not fully worn on the body and are not repair or replacement parts. (*Ibid.*)

As a result, we request deletion of the following annotations because they conflict with this opinion:

360.0006
360.0115
360.0146

Annotation 360.0110 is consistent with this opinion

If you have any questions, please contact me at (916) 322-3283.

ED/yg

cc: Ms. Kirsten Stark (MIC:50)
Mr. Brad Miller (MIC:92)
Ms. Lynn Whitaker (MIC:50)
Mr. Michael Lee (MIC:92)