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**STATE BOARD OF EQUALIZATION**

916-445-8485

July 22, 1988

X-----

Dear X-----,

This is in response to your letter to me dated June 14, 1988. You have requested a clarification concerning our June 1, 1988 letter to your accountant, Mr. X----- --. Specifically you inquire the reason for our excluding exercise tubes and cervical and lumbar pillows as orthotic devices. In addition, you bring to our attention our error in listing your seller's permit number as SR X-----.

Revenue and Taxation Code section 6369(c)(3) defines orthotic devices as those which are "... designed to be worn on the person of the user as a brace, support or correction for the body structure ..." While it may be true that cervical and lumbar pillows are corrective devices, our determination in excluding them from the definitional grouping of orthotic devices was premised on the fact that neither is "designed to be worn on the person of the user." To buttress this conclusion, your letter states that the cervical pillow "treats patients cervical spine as they sleep on it." Thus, the cervical and lumbar pillows are not "fully worn on the person of the user" and as such are not orthotic devices. The same rationale applies to the exercise tubes.

Since the cervical and lumbar pillows and the exercise tubes are not orthotic devices, you will be considered the retailer of these items. As a retailer, you are required to apply for a seller's permit and to file tax returns and remittances with the Board (see Revenue and Taxation Code sections 6066, 6452, 6453, and 6454). We suggest you contact our field office located at 100 Paseo de San Antonio, Room 307, San Jose, California, 95113-1477, telephone number (408) 277-1231. Our office personnel will be happy to assist you in completing the necessary paperwork.

Once you are in possession of a seller's permit, you may purchase the cervical and lumbar pillows and the exercise tubes ex-tax for resale by issuing your supplier a resale certificate.

I hope you find this information helpful. If there is a need, please feel free to write again.

Very truly yours,

E. L. Sorensen, Jr.  
Senior Tax Counsel

ELS:md

Bc: San Jose – District Administrator  
Please assist this taxpayer in obtaining a seller's permit.