



STATE BOARD OF EQUALIZATION

916-322-3684

November 8, 1985

Your letter of September 29, 1985 to Mr. Donald J. Hennessy, Tax Counsel, has been referred to me for reply. You request our opinion as to the correct application of sales tax to the sale of several products sold by your company. You have provided us with product information brochures and other information concerning the use of these products. These products and yours, ours, or the brochures' description of each are as follows:

Phoresor Iontophoretic Electrode

This product permits the administration of drugs into body tissue without the use of an injection. The product is not to be worn on the body and federal law restricts the product to use by or on the order of a physician.

Continuous Passive Motion Devices
(Elbow, Shoulder and Finger Units)

These products aid the patient's rehabilitative process and help in the regeneration of articular cartilage following joint injury or surgery. These products are to be fully worn by the patient.

Continuous Passive Motion Devices
(Knee and Hip Units)

These products are also used to aid the patient's rehabilitative process and to help in the regeneration of articular cartilage following injury or surgery. However, these products are not designed to be fully worn by the patient but require the product to be attached to a stationary object, such as a bed, while the patient uses the device in the bed.

Lossing Orthopedic Back Trac and Neck Trac

These products are used as traction devices to immobilize the back or neck. The devices are designed to be used by the patient in a prone, immobilized slate, either on the floor or in bed.

California Sales and Use Tax Law imposes tax on the sale or use of tangible personal property in this state, unless the sale or use is otherwise exempt from taxation. Revenue and Taxation Code section 6369 and Sales and Use Tax Regulation 1591, which

interprets and applies section 6369, provides that prescription medicines are exempt from tax. The term “medicines” is defined in subsection (b) (2) to exclude ... “articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, ... appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof, ...”

Additionally, section 6369(c) (6) provides that programmable drug infusion devices to be worn on or implanted in the human body are included within the meaning of the term “medicines” and are exempt from tax (emphasis added).

Also, in relevant part, section 6369(f) and Sales and Use Tax Regulation 1591(b) (4) provides that orthotic devices, or their replacement parts, furnished pursuant to the written order of a physician and designed to be worn on the person of the user as a brace, support or correction for the body structure are included within the meaning of the term “medicines” and are exempt from tax (emphasis added).

For purposes of section 6369(c) (6) and 6369(f), we are of the opinion that to be “worn on the person” or to be “worn on the human body” means that the apparatus must permit ambulatory movement and be fully worn on the body of the user

We will apply the foregoing criteria to determine whether sales tax applies to the sale of each item listed in your letter.

Phoresor Iontophoretic Electrode

This product is in the nature of a device or appliance pursuant to section 6369(b) (2) and is not exempt as a prescription medicine. Further, this product does not qualify as a programmable drug infusion device since it is not designed to be fully worn on the body or the user pursuant to section 6369 (e) (6). Therefore, tax applies to the sale of this device.

Continuous Passive Motor Devices (Elbow, Shoulder, and Finger Units)

These products are designed to activate, or supplement a weakened or atrophied limb or function and are to be fully worn on the person or user. Therefore, they meet the definition of orthotic devices, and their sale, if pursuant to the written order of a physician, is exempt from tax pursuant to section 6369 (f) and Regulation 1591 (b) (4).

Continuous Passive Motor Devices (Knee and Hip Units)

These products are also designed to activate or supplement a weakened or atrophied limb or function. However, it is our position that an orthotic device must be fully worn on the body of the user and permit ambulatory movement for it to qualify under section 6369(f) and Regulation 1591(b) (4) as a tax exempt medicine. It is apparent

from the photographs that the use of this product is restricted to patients who must lie in bed while the device is attached to a stationary object, such as the patient's bed frame. Therefore, this device does not permit ambulatory movement and is not fully worn on the person or user. Thus, it does not meet the definition of orthotic devices pursuant to section 6369(f) and Regulation 1591(b) (4), and tax applies to the sale of these devices.

Lossing Orthopedic Back Trac and Neck Trac

As noted above, an orthotic device must be fully worn on the body of the user and permit ambulatory movement for it to qualify under section 6369(f) and Regulation 1591 (b) (4) as a tax exempt medicine. The photographs of Back Trac and Neck Trac indicate that these devices are part of a traction device in which the patient's leg, neck, or back is supported or suspended from a stationary object, such as a bench or the patient's bed frame. Consequently, we are of the opinion that such apparatuses do not qualify as a tax exempt orthotic device since they neither permit ambulatory movement nor are they fully worn on the body of the user.

We hope this information answers your questions. We are enclosing copies of Regulation 1591 (Prescription Medicines) for your reference. If you have further questions, please do not hesitate to contact us.

Very truly yours,

Robert J. Stipe
Tax Counsel

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