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**STATE BOARD OF EQUALIZATION**

916-322-3684

March 24, 1986

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Dear Mrs. X-----,

Your February 18, 1986 letter to Mr. Larry Cutler has been referred to me for a response. You inquire whether the sale of a particular "orthopedic chair" is exempt from tax as a "wheelchair". You have enclosed an attachment that pictures and describes the chair.

The attachment describes the chair as a "Lumex" 3-position recliner with specially designed features for all day patient comfort. Attached to the rear legs of the chair are two five-inch ball bearing swivel casters with brakes and attached to the front legs of the chair are two five-inch fixed wheels. The attachment indicates the casters and wheels allow for easy maneuverability for transport. Finally, you indicate in your letter that "the chair can only be operated from the rear by an attendant...(and)...the brakes cannot be released by the patient...."

Except where the sales are specifically exempted by statute, sales tax applies to all retail sales of tangible personal property in this state (Rev. & Tax. Code §6051). Section 63699(a) of the Code exempts from tax the sale of medicines as defined. Section 6369(b)(2) provides that the term "medicines" does not include "articles which are in the nature of...apparatus, contrivances,...devices, or other mechanical...equipment...." In addition, section 6369.2 exempts from tax the sale of "wheelchairs, crutches, canes, quad canes, and walkers...."

Applying the preceding criteria to the "Lumex" chair described in your letter and the attachment, we are of the opinion that the sale of the chair is not exempt from tax pursuant to section 6369.2. Section 6369.2 describes items that assist their users as they move themselves from one point to another. The chair described in your letter and the attachment is not designed to be operated by the user alone to achieve any significant mobility. A second person, or attendant, is needed before the chair can function as a means of movement from one point to another. Additionally, it appears the function of the five-inch wheels and casters are designed primarily to facilitate the placement of the chair and not to assist the mobility of the user. In brief, the "Lumex" three-position recliner does not assist the user to move him or herself from one point to another.

Therefore, the sale of the “Lumex” chair is not exempt as a wheelchair since it does not perform the same function as a wheelchair.

It is our opinion that the chair can more accurately be described as an article which is in the nature of an apparatus, contrivance, device or other mechanical piece of equipment and therefore expressly excluded from the definition of “medicine” pursuant to section 6369(b)(2). Therefore, since the sale of the chair is not exempt pursuant to any exemption in the Revenue and Taxation Code, its sale is taxable pursuant to section 6051.

If you have any further questions, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe  
Tax Counsel

RJS:sr

Cc: San Francisco Auditing