

**STATE BOARD OF EQUALIZATION**

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June 9, 1983

Ms. S--- L. K---, R.N., M.A.
Administrative Director
P--- M--- S---, Inc.
XXXX --- --- Circle, Suite XXX
---, CA XXXXX

Re: SR – XX XXXXXXX

Dear Ms. K---:

Your letter of April 26, 1983 to Mary Armstrong, Tax Counsel, has been referred to me for reply. You request our opinion as to the correct application of tax to certain medical dialysis products.

Tax does not apply to the sale of prescription “medicines,” as that term is defined under Section 6369 of the Revenue and Taxation Code and Sales and Use Tax Regulation 1591. Subsection (j) of Regulation 1591 provides that certain “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 [Revenue and Taxation Code] section 6369.” Included within the meaning of the term “appliances and related supplies” are kidney dialysis machines (hemodialysis and peritoneal dialysis) and certain related supplies.

In order to qualify as a “related supply,” it is our position that an item must be a necessary and integral part of the machine or device itself, or a substance or preparation intended for external or internal application to the body of the patient undergoing dialysis. Accordingly, items which are used by a technician during the operation of the dialysis machine, or items which are peripheral to the dialysis process are not exempt from tax.

Therefore, it is our opinion that tax does not apply to the sale or use of the following items:

1. STOP/START KITS

These kits contain supplies needed for initiating and discontinuing the hemodialysis procedure. They contain such items as syringes, needles, alcohol wipes, betadine swabs, 4X4's, underpads and bandaids.

2. CARRYING POUCH FOR CAPD

The pouch is used by the CAPD patients to carry their empty bag around their waists between exchanges (treatments).

3. BETA CAP SYSTEM

The Beta Cap System is a group of supplies used by the CAPD patient when the abdominal catheter is capped and disconnected from the line that transfers the solution into the abdomen. The name "Beta" comes from the fact that betadine is used in the system as a disinfectant.

4. CYSTO FLO SET "S" HOOK

This hook is used by the CAPD patient to hang his solution bag while infusing new solution into the abdomen; such as, hanging it on the top of the door instead of using an IV stand.

5. REPLACEMENT PARTS FOR THE DIALYSIS MACHINE

This includes any part necessary for maintenance and repair of the kidney machine.

The CAPD Skin Scrub Tray is a sterile tray containing 4X4's, drapes, gloves, applicators and containers for betadine solution for soaking an abdominal catheter connector. This tray is used when the tubing connected to the abdominal catheter is changed. The following items contained in the CAPD Skin Scrub Tray are subject to tax since they are not used directly on the patient receiving hemodialysis:

Applicators
Gloves
Containers for betadine solution

The remainder of the items contained in the CAPD tray are exempt prescription "medicines" when they are used in conjunction with the dialysis treatment. When exempt and nonexempt items are sold together in a tray or kit form, tax applies to the lump-sum price charged for the tray unless an allocation is made between the taxable and nontaxable items contained in the tray.

You also inquire as to the application of tax to 4X4 inch dressings. In our previous letter to you (April 21, 1983), we classified as exempt the 4X4 inch Topper Sponge in the hemodialysis catalog; whereas, in the CAPD catalog, we classified as taxable the sponges (Topper and Guaze). It was Ms. Armstrong's opinion that the sponges listed in the CAPD catalog are used for cleaning purposes. Such use is subject to tax. However, the sale of these sponges or dressings are not subject to tax if they are used for application to the patient's body during the dialysis treatment.

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

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba

bc: Santa Rosa – District Administrator