

**STATE BOARD OF EQUALIZATION**

(916) 445-2641

September 2, 1977

Mr. T--- S---  
Manager  
N--- A--- Inc.  
XXX --- ---  
--- ---, NY XXXXX

Dear Mr. S---:

This is in response to your letter of July 29, 1977. You have raised a question with respect to the proper application of the California sales tax.

We understand that N--- A---, Inc., whose business location is in the State of New York is a supplier of radioactive sources and accessories used in cancer treatment. Your radioactive source manufacturer is I--- P--- L--- of ---, California.

In a recent audit by the State Board of Equalization, IPL was assessed sales tax for shipments covering products sold to you but shipped to users in California during the period December 1975 through October 1976.

Your arrangement with I--- P--- L--- is that you give them shipping instructions and it ships to your customers and bills you for materials involved. You in turn bill the user (your customer) which is generally a hospital.

You have regarded the radioactive items as nontaxable because you consider the materials to be "medicines."

As you are aware, our Regulation 1591, "Prescription Medicines," provides that tax does not apply to sales of medicines for the treatment of a human being, which medicines are sold to a hospital for the treatment of a human being. "Medicines" is defined to include any substance or preparation for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease, which is commonly recognized as a substance or preparation intended for such use. Specifically excluded from the term "medicines" are articles which are in the nature of instruments, apparatuses, contrivances, devices or mechanical of physical equipment.

The particular products in question are your miniaturized intracavitary cesium-137 sources for radiotherapy afterloading devices, your eye therapy system which uses strontium-90, and your cesium-137 tube sources.

We are of the opinion that the items in question do not constitute "medicines" but are devices or physical equipment and are taxable as such. Cesium-137 has a 30 year half-life and strontium-90 has a 28 year half-life. These radiation sources clearly are not consumed in the treatment of disease in the manner in which substances and preparations typically regarded as medicines are so consumed. We have always taken the position that tax applies to sales of X-ray equipment even though the X-ray equipment is the source of radiation for treatment or diagnosis of human ills. Likewise tax applies to sales of sunlamps used for medical purposes. We think it immaterial that the radiotherapy sources in question may be used intracavitarily.

Very truly yours,

Gary J. Jugum  
Tax Counsel

j:alicetilton