



**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001  
TELEPHONE (916) 920 - 7445

MEMBER  
First District

BRAD SHERMAN  
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.  
Third District, San Diego

MATTHEW K. FONG  
Fourth District, Los Angeles

GRAY DAVIS  
Controller, Sacramento

April 15, 1994

\_\_\_\_\_  
BURTON W. OLIVER  
*Executive Director*

X-----

Re: X-----  
Vascular Intervention Devices

Dear X-----,

I am responding to your letter to the State Board of Equalization dated March 9, 1994 regarding the application of sales tax to X-----'s sales of its primary product, a directional coronary atherectomy system. You describe X-----'s operations as follows:

“X----- develops, manufactures and sells a coronary atherectomy system. The system is used to excise and retrieve plaque from disease coronary arteries. All X----- catheters are intended for one time use only and are disposable.”

You attached to your letter a brochure detailing how the system is used. It consists of a head on one side of which is a balloon and the other side is a micro-cutter. The head is inserted into the blood vessel through the blockage and is positioned over the lesion. The balloon inflates to hold it against the vessel wall and the cutter retracts. The system is pulled back, resecting the lesion and pushing it into the collection nosecone. The balloon is then deflated, the head re-positioned over another lesion, and the process repeated.

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ... " (§ 6091.) "Exemptions from taxation must be found in the statute." (Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 P.2d 201.]) The taxpayer has

the burden of showing that he clearly comes within the exemption." (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Prescription Medicines.

Section 6369, interpreted and implemented by Title 28, California Code of Regulations, Regulation 1591, provides that sales of medicine, when prescribed and sold or furnished under certain conditions for the treatment of a human being, are exempt from sales or use tax. (Reg. 1591(a.) Subdivision (b) (1) defines "medicine" to "mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and which is commonly recognized as a substance or preparation intended for such use." However, Regulation 1591(c) (2) adds that "medicines" do not include "articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof." (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) As a rule, then, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines.

C. Tax Consequences to X-----

The system, as described in the brochure, is used temporarily during surgery to remove and collect lesion tissue which is blocking the blood vessel. It also retains the tissue for analysis. It is thus an appliance or device excluded from the definition of "medicine" under Regulation 1591(c) (2). Sales of this device are thus subject to tax.

For your information I have enclosed a copy of Regulation 1591. I hope the above discussion answered your questions. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid  
Tax Counsel

JLW:es

Enclosure: Reg. 1591