

**STATE BOARD OF EQUALIZATION**

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September 10, 1990

Ms. L--- K---
President
R--- L--- N--- S---
XXX --- Street
--- ---, CA XXXXX

RE: SR -- XX-XXXXXX

Dear Ms. K---:

Your letter of July 5, 1990 has been referred to me for response. Our answer has been delayed because your letter went to the wrong address and only just arrived here. You are requesting an opinion regarding the sales tax consequences to you of the resale by chiropractors of the nutritional supplements which you sell to them.

I. FACTUAL BACKGROUND

Your letter indicates that R--- L--- N--- S---, Inc. (hereinafter "R---"), sells nutritional supplements to chiropractors. I had a telephone conversation with Alexandra Freitas of the --- --- Field Office, who is auditing your account, on August 22, 1990, and understand that a question arose regarding the methods by which some of the chiropractors to whom you sell account for their sales of R---'s products to their patients.

I understand that at least some of the chiropractors, when selling R---'s products as part of the treatment of patients, charge for the supplements separately on their bills and even mark up the charge to the patient. They may also sell such products to the general public. The issue appears to be thus: Does the fact that the chiropractor separately charges for the nutritional supplements mean that all sales to him are excluded from tax as being for resale?

II. 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.) A “retailer” is one who engages in the business of making retail sales of tangible personal property. (§ 6015(a).) The retailer owes the sales tax, but it may collect sales tax reimbursement from the purchaser pursuant to agreement. (Civ. Code § 1656.1.)

Likewise, Section 6201 imposes a use tax on the storage, use, or other consumption of tangible personal property purchased from any retailer for storage, use, or other consumption in this state unless exempted by statute. The use tax is supplemental to the sales tax, and, as such, is intended to equalize the tax burden by subjecting all sales of property not actually subject to the sales tax to an equivalent tax. (Bank of America v. St. Bd. of Equal. (1962) 209 Cal.App.2d 780, 792 [26 Cal.Rptr. 348].)

Chiropractors are not “physicians or surgeons.” (II. Bus. Tax. L. Guide, Annot. 425.0022.) Thus, their sales of R---’s products are not exempted from sales tax as prescription medicines under Section 6369.

Under the general scheme, where a sales transaction involves intermediate retailers who buy and resell the product, sales tax is due only upon the transfer to the ultimate purchaser (here, the patient). Any intermediate sales are treated as sales for resale and thus not includable in the measure of sales or use tax. (§§ 6007, 6091.) The Legislature has, however, partially altered that scheme with regard to chiropractors. When the chiropractor uses or furnishes vitamins, minerals, dietary supplements, and orthotic devices in the performance of his professional services, he is treated as the consumer thereof and not the retailer. (§ 6018.4.)

“Every person desiring to engage in or conduct business as a seller within this state shall file with the board an application for a permit for each place of business.” (§ 6066.) A person who has a seller’s permit may purchase tangible personal property free of sales tax by issuing a resale certificate which the seller takes in good faith. (§§ 6091-6093.) If the purchaser makes any use of the property so purchased other than the retention, demonstration, or display while holding it for sale in the regular course of business, the purchaser is liable for use tax at the time of first use. (§ 6094.)

B. Tax Consequences to R---

Previous rulings of the Board staff indicate that Section 6018.4 can cause a chiropractor to play two different roles when purveying nutritional supplements such as R---'s. First, when dispensing the supplements in the course of rendering professional services – i.e., when it is recommended as part and parcel of the regimen of treatment that the patient take the supplements – the chiropractor is the consumer of the supplements. The chiropractor is “furnishing” the supplements within the meaning of the statute even when charging for them separately. On the other hand, when selling supplements on a general basis without also rendering professional services to the purchaser, a chiropractor is treated as the retailer of those products.

A chiropractor who sells nutritional supplements at retail must have a seller's permit. Any chiropractor to whom you sell who has a seller's permit may purchase R---'s products free of tax by issuing you a resale certificate at the time of purchase. If the chiropractor does not have a seller's permit, you must pay sales tax and collect sales tax reimbursement at the time of the sale. If the chiropractor issues you a resale certificate and you take it in good faith, the chiropractor will then have to pay use tax on the supplements consumed and pay sales tax on those sold at retail.

I hope the foregoing discussion has answered your question. If you need anything further, please do not hesitate to write again.

Very truly yours,

John L. Waid
Tax Counsel

JLW:sr