

**STATE BOARD OF EQUALIZATION**

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August 4, 1994

BURTON W. OLIVER
Executive Director

[A]

Re: [X]

Dear [A],

This is a response to your letter dated July 7, 1994 regarding the application of tax to sales of medical identification cards. You state:

“My company, [X], manufactures and markets the ‘Medical Data I.D.’ card. The purpose of this card, like an identification tag, is to alert other persons to the medical condition of the card holder. If the card holder is unable to speak, the card, ‘Medical Data I.D.,’ will do the talking for him or her. This card is always carried in the wallet or purse with one’s driver’s license.”

You ask “if ... [your] company is eligible to become tax exempt because of the service you provide.”

Discussion

It is unclear whether [X] requests our opinion on how become a tax exempt company for income tax purposes or whether its sales of the “Medical Data I.D.” card may be exempt from sales tax. For purposes of this opinion, we assume that [X] asks whether sales of its identification card are exempt from sales tax. Questions regarding a company’s tax exempt status should be directed to the Franchise Tax Board (“FTB”).

Sales tax is imposed on a retailer’s gross receipts from the retail sale of tangible personal property in California unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A “retail sale” means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (Rev. & Tax. Code § 6007.) This means that [X]’s retail sale of its medical data identification card in California is subject to sales tax unless an exemption applies.

The sales tax exemption relevant to [X] is set forth in Revenue and Taxation Code section 6371 as follows:

“(a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption of, medical identification tags furnished by an organization which is exempted from taxes under Section 23701.

“(b) For purposes of this section, ‘medical identification tags’ includes any tag worn by a person for the purpose of alerting other persons that the wearer of the tag has a medical disability or allergic reaction to certain treatments.”

A sales tax exemption for sales of identification cards by your company accordingly depends on whether: 1) [X] is exempt from taxes under Revenue and Taxation Code section 23701; and, 2) [X]’s medical data identification card constitutes a “medical identification tag.”

[X] is not exempted from taxes under Revenue and Taxation Code section 23701. That section requires, among other things, that [X] be organized for nonprofit purposes within a specific section of that article, file an application and fee for exemption with the FTB, and be subject to a determination by the FTB that your organization is exempt. (A copy of Rev. & Tax. Code § 23701 is enclosed for your review.) We initially note that the articles of incorporation accompanying [X] application for a seller’s permit do not state that it is organized and operated as a nonprofit corporation. (See Corp. Code § 5130.) Moreover, [X]’s operations do not appear to fall within one of the specified organization set forth in Revenue and Taxation Code section 23701 et seq. Those organizations consist of, among other things, labor organizations (Rev. & Tax. Code § 23701a), fraternal societies (Rev. & Tax, Code § 23701b) and religious organizations (Rev. & Tax. Code § 23701d).

Since [X] is not exempt from taxes under Revenue and Taxation Code Section 23701, it is not necessary to decide whether [X] medical identification card qualifies as a “medical identification tag.” [X]’s retail sales of its medical data identification card are accordingly subject to sales tax.

If you have any further questions, feel free to write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh
Enclosure - Rev. & Tax. Code § 23701
cc: Oakland District Administrator - CH