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**STATE BOARD OF EQUALIZATION**

December 23, 1965

Gentlemen:

Your letter of November 19 addressed to our subdistrict office, has been referred to this office for reply.

As provided in Section 6018 of the Sales and Use Tax Law, a licensed optometrist is the consumer and not the retailer "with respect to the ophthalmic materials used or furnished by him in the performance of his professional services in the diagnosis, treatment or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof." (Emphasis added.) This means that as to this tangible personal property, tax applies to its sale to the optometrist. If the optometrist has acquired such property outside the state or under a resale certificate, he must pay the tax on his cost of such property.

In our opinion an optometrist is the retailer and must pay tax on his gross receipts from sales of goggles, sun glasses, colored glasses or occupational eye-protective devices, frames, and any other tangible personal property of which he is not the consumer under Section 6018.

We have also taken the position that when an optometrist fills a prescription written by an oculist or other optometrist, he is the retailer of the glasses, frames, and other property, in the same manner and to the same extent as is a dispensing optician when filling the prescription of an oculist or optometrist. This position, however, is currently the subject of litigation in the Los Angeles Superior Court in an action for refund of sales tax, entitled [X] v. State Board of Equalization, Los Angeles Superior Court No. [X]. In this action, Dr. [X] contends that he is the consumer of glasses, frames, etc., even though he did not write the prescription, the prescription having been furnished by another optometrist or by an oculist.

Enclosed is a copy of Ruling 20, Oculists, Optometrists and Dispensing Opticians.

Very truly yours

E. H. Stetson  
Tax Counsel

EHS:fb [lb]