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October 18, 1996

E. L. SORENSEN, JR.
Executive Director

Ms. D--- S---
Accounting Manager
V--- Corp.
XXXX --- --- ---
Suite XXX
---, MN XXXXX

Re: No Permit Number

Dear Ms. S---:

This responds to you letter dated June 24, 1996 which requests a determination of the applicability of sales and use tax to training programs V--- Corp. sells with its L--- V--- E--- S--- (L---). Your letter states:

“V--- Corp. is in the process of applying for a seller’s permit for the State of California. We will be dispensing low vision aids and providing training and rehabilitation services at the P--- C--- in --- ---, CA. One of these aids, in particular, is a unit we manufacture called the L--- (L--- V--- E--- S---), a prosthetic device that enhances the vision of the legally blind. This device will be prescribed by an Optometrist and dispensed by Opticians and Clinical Assistants hired by the Company. I have enclosed a brochure describing our product in a little more detail.

“I understand that the sale of L--- is taxable under the parameters of the California sales tax regulations. Each time we sell an L---, we also sell a training package on how to use the device. This training is sold as a separate item and at an additional cost to the patient. Medical Assistance does not currently reimburse the patient for the expense of this device or for the training. The training will be performed by both licensed and non-licensed health care providers such as Opticians, Optometrists, Clinical Assistants and Occupational Therapists. I am trying to determine if the sale of the training package is taxable under the California sales tax regulations.

“However, I am also concerned that the training might somehow be equated with rehabilitation and therefore be taxable. Does this service fall under the definition of being ‘part of the sale’? We will sell a training package with each L--- we dispense and may sell additional training packages at the patients [sic] request in the future.”

In California, except where specifically exempted by statute, Revenue and Taxation Code section 6051 imposes a sales tax on a retailer’s gross receipts from the retail sales of tangible personal property in this state. Revenue and Taxation Code section 6012 defines “gross receipts” as the total amount of the sale price of the retail sales of retailers, and includes any services that are a part of the sale. When the seller makes a charge for a service that is separate from the sale and would not otherwise be taxable, that charge will be taxable as part of the sale of the tangible personal property if the purchaser cannot purchase the tangible personal property without also purchasing the service.

As we understand it, your question concerns whether your taxable gross receipts from the sale of the L--- includes the charges for the training package you dispense each time you sell an L---. In order to determine the taxability of the training packages, we need additional information of what the packages encompass. Also, we need to know whether the training packages are mandatory or optional for the purchaser of the L---. According to your letter, every time V--- sells an L---, it sells a training package. If the customer must purchase the training package as a condition of his purchase and/or the functional use of the L---, then the training package is deemed mandatory and considered a service that is part of a sale. Based on the facts in your letter, it appears that the training is mandatory. Thus, the taxable gross receipts for the sale of the L--- include the charge for the training package.

Although it appears that the training package is mandatory, as discussed above, we provide you the following information in case the facts are other than as we understand them. If the training package is optional, the application of tax to the charges for the training depends on whether the training itself is a sale of tangible personal property, in whole or in part. If the training consists only of the providing of training materials, the entire charge is taxable. If, however, V--- performs significant training services and bills the training in lump sum, then no tax applies to that lump sum charge for training. V--- would be the consumer of the classroom materials it provides and tax would apply to the sale of those materials to V---. If, instead, V--- makes a separate charge for the materials it provides to its customers as part of the training (such as videotapes, pamphlets and books), it would be the retailer of any such materials and sales tax would apply to that separate charge. (See BTLG Annot. 515.0015 (3/31/80).)

Ms. D--- S---
V--- Corp.

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October 18, 1996
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I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Very truly yours,

Robert E. Thomas
Tax Counsel

RET/cmm

cc: Out-of State District Administrator