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**STATE BOARD OF EQUALIZATION**

November 9, 1971

Attention: X-----

Dear Mr. X----- :

Your letter of October 12, 1971, addressed to Mr. Walter Shaffer of our San Diego office has been referred to this office for reply.

We understand that your client, X----- Inc., a California corporation, recently purchased X----- . As part of the purchase, your client acquired \$5,000 of trade fixtures and other personal property which were and will be used exclusively in the pharmacy for the dispensing of prescription drugs. It is your position that the transfer of these assets is exempt from tax, under sections 6367 and 6006.5(a) of the Revenue and Taxation Code.

You point out that X----- held a seller's permit, at the time the sale in question took place, because it retailed "items of personal property not exempt under the provisions of the Revenue and Taxation Code." You find nothing in the code which would require a seller to hold a seller's permit "if he were exclusively engaged in the sale of exempt items."

Section 6066 of the code provides that, "Every person desiring to engage in or conduct business as a seller within this state shall file...for a permit..." Section 6014 defines "seller" to include "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are included in the measure of the sales tax." [Emphasis added.]

Section 6369 of the code provides an exemption from the tax for the gross receipts from the retail sale of "medicines" sold under certain specified conditions. In our opinion "medicines" is not a "kind" of property the retail sale of which is not subject to tax. This is especially so since the definition of medicines is not coextensive with the class of property which can be sold on prescription only. Rather, "medicines" is a broader class and can include, for example, baby powder and lubricating jelly, items which may be purchased at retail under other than exempt conditions. Accordingly, we are of the opinion that a person selling "medicines" exclusively is required to hold a seller's permit even though all sales of the "medicines" may be exempt under section 6369. [Cf. Cal. Tax Ser. Anno. 410.0280, May 27, 1952.] Thus we must conclude that

the transfer in question was a transfer of property held or used in the course of an activity requiring the holding of a seller's permit, and that the tax is properly applicable.

Very truly yours,

Gary J. Jugum  
Tax Counsel

GJJ/ab

bc.: San Diego – District Administrator