

**STATE BOARD OF EQUALIZATION**

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October 24, 2002

Ms. S--- H---
 N--- C--- H--- Center
 XXXX --- Lane
 ---, California XXXXX

**Re: Pulsed Irrigation Evacuation
 SR -- XX-XXXXXX**

Dear Ms. H---:

I am answering your letter dated May 6, 2002, to me regarding your sales of the Pulse Irrigation Evacuation (PIE) colon irrigation system. I apologize for the delay in answering. You describe the PUIE system as follows:

"The PIE is a closed system that pulses warm water into the colon through a cuffed speculum, hydrating stool and allowing it to evacuate by gravity to a containment bag. The gentle pulsing water stimulates the natural peristaltic action of the colon. Inflow and outflow is controlled and adapted to each patient and application. Inflow is under low pressure, 3 psi. Outflow is to gravity only. At no time is material suctioned out if the patient."

You are marketing this system to home-bound patients for on-going therapy in their own homes.

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes a sales 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.) "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ..." (§ 6091.) "Exemptions from taxation must be found in the statute." (Market St. Ry. Co.

v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 PO.2d 201.] "The taxpayer has the burden of showing that he clearly comes within the exemption." (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Prescription Medicines.

Section 6369, interpreted and implemented by Title 28, California Code of Regulations, Regulation 1591, provides that sales of medicine, when prescribed and sold or furnished under certain conditions for the treatment of a human being, are exempt from sales or use tax. (Reg. 1591(a).) Subdivision(b)(1) defines "medicine" to "mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and which is commonly recognized as a substance or preparation intended for such use." However, Regulation 1591(c)(2) adds that "medicines" do not include "articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof." (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) As a rule, then, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines.

Certain items, which might otherwise be considered as being devices, etc., are defined as "medicines." Regulation 1591(b)(2) includes items permanently implanted in the human body for the purpose of assisting, as opposed to replacing, the functioning of any natural organ, artery, vein, or limb, and which remains or dissolves in the body. Regulation 1591(b)(4) includes orthotic devices, or their replacements, designed to be worn on the person of the user as a brace, support, or other correction for the body structure. Regulation 1591(b)(5) includes prosthetic devices and their replacement parts designed to be worn on or in the person of the user to replace or assist in the functioning of a natural part of the human body. Regulation 1591.1(b)(2) includes any appliances and related supplies necessary as a result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste.

C. Tax Consequences to N--- C--- H---

We have previously concluded that items like the PIE, which inject liquid to stimulate the body's natural elimination system, apply treatment to the patient. They are neither implanted in nor worn on the body nor are they made necessary as a result of a surgical procedure by which an artificial opening is created to eliminate natural waste. For these reasons, they do not qualify as medicines under Regulation 1591. (See, e.g., Annot. 425.0522 (3/3/95). Sales and Use Tax Annotations are excerpts from previous Board Staff opinion letters and serve as guides to Staff positions.) As a result, they are excluded from the term "medicines" under subdivision (c)(2).

In your letter, you indicate that you sell your products directly to patients for use in their own homes. You also indicate that you are a licensed durable medical equipment provider. You are not, however, a pharmacist, as required under Regulation 1591(d)(1). As a result, your sales are subject to tax on this additional basis.

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

Sincerely,

John L. Waid
Senior Tax Counsel

JLW/ef

cc: --- --- District Administrator (--)