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April 24, 1996

Mr. R--- C. M---
V.P. Operations
N--- P--- H--- Corporation
XXXXXX --- Boulevard, Suite XXX-XXX
---, CA XXXXX

SR – XX-XXXXXX
Hemodialysis Supplies

Dear Mr. M---:

I am answering your letter to me dated February 11, 1996. You ask about the application of sales tax to N--- P---’s sales of certain hemodialysis supplies. Your question is as follows:

“N--- P--- imports and distributes medical supplies on a nationwide basis. Over the past year we have been advised by a number of Dialysis clinics that we are the only vendor who charges sales tax on latex and vinyl patient examination gloves. In response, we have generally offered to exempt the California sales tax if the clinic would furnish us with a California resale permit number that indicated that the clinic charged another entity for the gloves and charged sales tax.

“Our specific question is: Are gloves, face masks, isolation gowns, shoe covers, hair covers and other articles of personal protection wear exempt from sales tax when used in a dialysis clinic during dialysis treatment of a patient?

“We also supply sterile gauze dressings which are used directly on the dialysis patient during and after treatment, are these dressings exempt from sales tax?”

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 P.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.

Regulation 1591(b) does provide that certain items which might otherwise be considered as being devices, etc., are defined as "medicines." Subdivision (j) 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. Interpreting and implementing section 6369.1, it specifically defines kidney dialysis machines, and the tubing, pumps, blood sets, fistula sets, and shunts used in connection with such machines as "appliances" and "related supplies." We have previously determined that "related supplies" must be necessary and integral to the proper functioning of the dialysis machines themselves or preparations intended for external or internal application to the body of the patient undergoing dialysis. Accordingly, sales of items used by technicians while operating the dialysis process or which are not utilized by the dialysis patient are not exempt from tax under this section.

C. Tax Consequences to N--- P---

We have previously determined that, under the above authority, gloves, face masks, isolation gowns, shoe and hair covers and other such articles are used by the technicians during the dialysis process and so are not "related supplies" within the meaning of Regulation 1591(j). In addition, "dressings" are one of the items mentioned specifically in Regulation 1591(c)(2) as being excluded from the definition of "medicines." As a result, N--- P---'s retail sales of all of the listed items are subject to tax. We agree, however, that if N--- P--- is selling to a person that is purchasing these items for resale, such sales are excluded from tax as being for resale, (§ 6007) and N--- P--- should obtain a resale certificate from the purchaser at that time.

For your information, I have included a copy of Regulation 1591. 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 Staff Counsel

JLW:sr

Enclosure: Reg. 1591

cc: --- District Administrator - - -