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September 2, 1992

Ms. G--- L---
L--- I---, Inc
XXX --- Street
--- ---, CA XXXXX

Re: SR -- XX-XXXXXX
Sales of Nutritional Products to
Health Professionals

Dear Ms. L---:

I am writing this in response to your letter to me of July 21, 1992, which is a follow-up to my July 6, 1992 letter. I am sorry you were so disappointed in the result. This is a complex area, and clear answers require clear input.

You indicate in your letter that L--- I---, Inc. ("L---"), is in the business of selling vitamins, minerals and nutritional products to health professionals for resale. You understand that L--- may sell free of tax to any seller who at the time of sale issues a resale certificate which L--- accepts in good faith. You want to know to which of its customers may L--- sell free of tax without the necessity of a resale certificate. You also do not understand why I referred to L---'s products as medicines in my previous letter.

OPINION

Now that I have a clearer picture of your problem, I can understand your confusion. Several principles are operating here. Unfortunately, no one rule applies to all of your sales.

First, the term “medicines” as defined in Regulation 1591(b)(1) is broader than the term “prescription medicines” as commonly used in pharmacological terminology. The Board has long considered that, for sales tax purposes, “medicines” may include vitamins, minerals, and even certain nutritional products. If these products are supplied to their patients by physicians, surgeons, dentists, or podiatrists as part of the treatment of the condition for which they attend their patients, sales of such items to such physicians, dentists, surgeons, or podiatrists are exempt from tax. (Reg. 1591(a)(1) & (2).) Any sales of such products a physician, etc., makes over the counter to the general public or to patients who come in to refresh their supplies of their own accord and without a prescription are subject to tax.

Not all persons who make purchases intending to re-sell the items purchased may claim the purchase-for-resale exclusion. Certain persons are declared to be consumers by statute. Sales to them are subject to tax. To make it more confusing, certain persons, especially health professionals, may be either sellers or consumers, depending exactly on how they intend to use the items being purchased.

With this framework in mind, the status of the health professionals about whom you inquired is as follows:

1. Doctors, surgeons, dentists, and podiatrists must hold seller’s permits unless they sell only exempt medicines or by virtue of making a lump-sum charge are consumers. Tax does not apply, however, to their purchases of medicines for the treatment of human beings regardless of whether or not they make a separate charge therefor to their patients. (Reg. 1591(f).) Thus, when L--- sells to such persons, such sales may be made free of tax if the buyer issues it either a resale certificate or an exemption certificate. (Regs. 1591(p)(3) & 1667.)
2. Chiropractors, as I mentioned in my previous letter, chiropractors are retailers of vitamins, minerals, and nutritional supplements that they sell over the counter but are consumers of those that they supply to their patients in the course of treatment. (Rev. & Tax. Code § 6018.4.) Chiropractors must issue L--- resale certificates stating that the products purchased will be resold in the regular course of business for sales to them to be free of tax.
3. Pharmacists are in the business of selling medical items and must possess seller’s permits. No statutory exemption applies to sales of medicines to pharmacists. As a result, they may purchase L---’s products ex-tax only by issuing L--- a proper resale certificate.
4. Nutritionists, etc. No statutory exemption applies to sales to such persons. If they sell L---’s products, they may, like any other seller, make purchases for resale. Sales to such persons are thus subject to tax unless they present resale certificates stating that they will re-sell the products purchased in the regular course of their businesses.

Ms. G--- L---

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For your information, I have included copies of Regulations 1667 and 1668. 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
Tax Counsel

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Enclosures: Regs 1667 & 1668