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December 9, 1992

Mr. M--- A. W---
Tax Manager, B---, Inc.
P.O. Box XXX
---, Indiana XXXXX-XXXX

Re: SC --- XX-XXXXXX
Orthotic Devices

Dear Mr. W---:

I am responding to your letter to the Legal Division dated October 13, 1992. You requested advice regarding your company's sales of orthotic and sports therapy and rehabilitation ("START") devices. Included with your letter were excerpts from a catalog, two lists of devices, and a START which you asked me to review. You attached an excerpt from Pamphlet No. 45, and a copy of Regulation 1591.

You indicate that the majority of B---'s customers are hospitals. Many of the devices it sells are "eventually" prescribed by a physician, but the hospitals purchase several items at once. You do not indicate if the hospitals purchase the devices free of tax by issuing B--- resale certificates.

OPINION

A. Sales and Use Tax Generally

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise 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 noted, all statutory references are to the Revenue and Taxation Code.) As you are aware, 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) provides that, as a rule, items used to diagnose a condition or to

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apply medicine or treatment to the patient are not considered to be medicines.

As you also note, Regulation 1591(b) does provide that certain items which might otherwise be considered as being devices, etc., are defined as “medicines.” 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. Although splints are generally not considered medicines, they may be so if used as a support, brace, or other correction for the body structure. Such devices that merely restrict mobility in the affected area are not medicines. We have previously determined the tax status of most of these devices.

B. Tax Consequences to B---

1. Head & Neck/ Chest/ Back & Abdominal Supports are considered to be orthotic devices when used for the above purposes.

2. Shoulder/ Upper Arm/ Elbow/ Wrist and Forearm Supports. Clavicle, elbow, and wrist supports, slings, and shoulder immobilizers are orthotic devices when used as supports, braces, or other correction for the body structure. (Reg. 1591(b)(4).) I could not determine from the copy of the catalog what a “Pavlik Harness” was, except that it was used on infants. As a result, you must consider it to be a taxable device pending further information.

3. Hip/ Thigh/ Knee/ Lower Leg and Foot Supports. We have previously determined hip, knee, and ankle supports to be orthotic devices because they help support the body structure. The abduction cushion is, however, a taxable appliance.

4. Splints and Braces. We have previously determined that aluminum arm splints, finger splints, knuckle benders, and leg splints are exempt orthotic devices. Leg Boots are not, however.

5. Support Accessories and Supplies. Tension pillows do not appear to be worn on the body and so do not qualify as orthotic devices. We have previously determined that post-op shoes, rocker cast shoes, Reed cast belts, cast boots, heel and elbow protectors, bandages, restraints, and padding are taxable devices.

6. START Products. We have previously determined knee sleeves and patella stabilizers, shoulder cuffs and sleeves, wrist and elbow supports, ankle braces, and rehabilitation knee braces to be orthotic devices. Your categories, “Other CTN Sleeves and Products,” and “Athletic Bandages and Splints,” are too general for me to render an opinion, and the brochure does not describe the items you categorize as “Soft Sports Medicine Products.” Sales of these items are taxable pending further information.

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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.

Sincerely,

John L. Waid
Tax Counsel

JLW:es