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Executive Director

January 25, 1996

Dear X-----,

This is in response to your letter dated December 6, 1995, regarding the application of tax to the sale of an item called the "Broach" to hospitals in California, You state that the "Broach" is used to ream out bone so that an artificial hip joint can be implanted in a patient.

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.)

Revenue and Taxation Code section 6369, as explained in Sales and Use Tax Regulation 1591, provides that the 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) (copy enclosed).) Thus, there are two components to this exemption: (1) the item being sold must be a "medicine;" and (2) the sale of the "medicine" must be under certain conditions.

Subdivision (b)(I) of Regulation 1591 defines "medicines" as 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, "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. (Rev. & Tax. Code § 6369(b).) Thus, as a general rule, devices used to diagnose a condition or to apply medicine or treatment to the patient are not medicines for purposes of the exemption.

Regulation 1591 (b) does provide that certain items which might otherwise be considered as being devices are nevertheless defined as "medicines." Regulation 1591 (b)(4) includes as "medicines" orthotic devices, or their replacement parts, designed to be worn on the person of the user as a brace, support, or other correction for the body structure. Additionally, Regulation 1591 (b)(5) defines medicines to include prosthetic devices, or 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. However, the "Broach"; is not designed to be worn on or in a person and does not serve to support a body structure, replace a part of the human body, or assist in the functioning of a natural part of the human body. Therefore, the "Broach" does not fall within the definition of medicine and its sale is thus subject to tax.

If you have any further questions, please feel free to write again.

Sincerely,

Sophia H. Chung
Staff Counsel

SHC:rz

Enclosure: Regulation 1591

Cc: X----- District Administrator