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April 15, 1994

Mr. D--- T---
Mrs. S--- A. L--- G---
A--- A--- & Co.
Suite XXXX, --- --- Tower
--- --- Plaza
--- ---, California XXXXX-XXXX

Re: [No Permit Number]
Catheters

Dear Mr. T--- and Mrs. G---:

I am answering your recent letter to me of which the Legal Division received on March 4, 1994. You inquire generally about the application of tax to the sales of certain catheters. You list several catheters and describe the purpose of each.

OPINION

In my previous correspondence with you I have discussed the principles generally governing the exemptions from tax for sales of prescription medicines as provided in various statutes and interpreted and implemented by Regulation 1591. For the sake of brevity, I will not repeat them here. However, for a review of the principles governing the exemptions for sales of catheters, all catheters are taxable with three exceptions: (1) catheters which are permanently implanted are exempt under Regulation 1591(b)(2); (2) catheters which are used for drainage purposes through artificial openings are exempt under Regulation 1591(j); and (3) catheters or other types of drainage devices used for drainage through natural openings are exempt under sub-division (b)(5). To be exempt, their use must be post-surgery. Sales of catheters used for diagnostic purposes, irrigation, feeding, and administration are subject to tax.

Mr. D--- T---
Mrs. S--- L--- G---

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While you state the purpose of the catheters on your list, you do not indicate how they are used, whether post-surgically or not and how and for how long they are installed. For this reason I cannot give you a definitive opinion on all of the catheters. However, the Finalyson Ureteral Access Set, Balloon Ureteral Dilator Set, Omega Balloon Ureteral Dilation Set, Prostatic Dilation Catheter, and the Fogarty Arterial Embolism Catheter are used for dilation rather than drainage. Assuming they are not permanently implanted, such items are appliances or devices excluded from the term "medicine" under Regulation 1591(c)(2). You indicate that the Cone Tip Ureteral Catheter is used for retrograde pyelograms, a procedure in which the catheter is used to inject a roentgenographic contrast fluid into the renal pelvis through the ureter. This is a surgical procedure; the catheter is also an appliance or device excluded from the term "medicine" under Regulation 1591(c)(2).

If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es