

M e m o r a n d u m**425.0494.250**

To: San Francisco Audit (JES)

Date: March 14, 1990

From: Mary C. Armstrong
Legal

Subject: X-----

Your memorandum of February 2, 1990 to X----- has been referred to me for reply. You have requested our opinion regarding the correct application of tax to the sequential pneumatic pumps sold by the referenced taxpayer. As we understand it, the taxpayer operates a treatment clinic for patients afflicted with lymphedema of the leg or arm. Taxpayer also sells treatment pumps and appliances to her clients. The Lympha Press device which the taxpayer sells consists of a sleeve or stocking, a cover and a pneumatic pump.

Although Sales and Use Tax Regulation 1591(b)(4) provides that the term "medicines" includes certain kinds of stockings and sleeves which act as a support or correction of the body structure, we have consistently determined that such devices must be fully worn on the person of the user in order to qualify as "medicines" under this section. We are of the opinion that the Lympha Press device does not qualify as an exempt "prescription medicine" because it is not fully worn on the person of the user. In order to be effective, both the sleeve or stocking and cover must be attached to the pneumatic pump which is a large mechanical device. We are therefore of the opinion that tax applies to the sale of this item.

If you have further questions concerning this matter, we will be happy to discuss them with you.

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Cc: Mr. Glenn A. Bystrom