



STATE BOARD OF EQUALIZATION

916-324-5589

June 1, 1990

Dear X-----,

This is in response to your letter of March 29, 1990. You have requested our opinion regarding the correct application of tax to the orthopedic products your company sells and distributes.

California Sales and Use Tax Law imposes tax on the sale or use of tangible personal property in this state, unless such sale or use is otherwise exempt from taxation. Revenue and Taxation Code section 6369 exempts from tax the gross receipts from the sale, storage, use or other consumption in this state of medicines. "Medicines" as defined in section 6369 means and includes:

"... 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."

Section 6369(c)(1) and (2) provide that the term "medicines" includes sutures, whether or not sutures are permanently implanted, bone screws, bone pins, pacemakers, and other articles permanently implanted in the body to assist the function of all or any part of any natural organ, artery, vein or limb.

Section 6369(c)(3) provides that the term "medicines" includes orthotic devices or replacement parts for such devices, designed to be worn on the person of the user as a brace, support, or correction for the body structure.

Notwithstanding the above analysis, as to tax exempt medicines, the following items are specifically excluded from the term "medicines" unless they come within one of the exceptions listed above: "splints, bandages, pads, compresses, supports, non-medicated dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or component parts thereof."

Also excluded from the term "medicines" are orthopedic shoes and supportive devices for the foot unless they are an integral part of a leg brace or artificial leg or a "custom made biomechanical foot orthoses."

A “custom-made biomechanical foot orthoses” means an individually prescribed foot orthosis which is custom fabricated over a neutral or near neutral subtalar joint with a pronated midtarsal joint position positive plaster model of the patient's foot, which model, when the cast is modified to support the osseous position of the forefoot in relationship to the rear foot, embodies the angular osseous relationships of the anterior and posterior portions of the foot.

We have reviewed the items listed in your letter. The following items qualify as exempt “orthotic” devices under section 6369(c)(3) when they are sold to a physician for treatment of a patient or sold directly to a patient pursuant to a doctor's order or prescription:

Dricast Orthopedics

Miracle Knee Supports - TH109, TH209, TB309, TH409, TH509, TH609
Neoprene and Felt Buttress Pads - TH19, TH 191
Stabilizer Brace - TH192
Brace Hinge w/hyperextension stop - TH193B
Interior Patellar Pull Component - TH193B
Lateral Release Pad - TH195
Lumbro-Sacral Back Supports – TH101, TH201, TH301
Rib Belt - TH401
Abdominal Support - TH501
Thigh Calf Support - TH104
Magic Wrist Support - TH107
Ankle Elbow Support – TH108A & B
Tennis Elbow Support – TH108C
Wonder Straps - TH197 - exempt, if sold as part of a support item.
Prrddure Dots - TH198 - Exempt, if sold as part of a support item.
Flexible Ice Inserts - FI-4 - Exempt, if sold as part of a support item.

Ezy Wrap (Professional Products Inc.)

840 Ankle Brace
Arm Sling - #2341
Velcro Elastic Bandages - #4792
Wrist/Forearm Supports - #901, 903, 905, 907
Thumb/Finger Splints - #2552
Hinged Knee Brace - #1267

MediUSA

Genumedi - Elastic Knee Support
Levamedi - Elastic Ankle Support
Epicomed - Elastic Elbow Support

OMNI Scientific

OMNI II Bi-Lateral Knee Support
Anderson Knee Stable Knee Brace
OS-5 Off-The Shelf Custom Knee Brace
TS-7 Custom Knee Brace

Orthoglass

Orthoglass Fiberglass Splinting (Casting) Material
Orthoglass Elastic Bandage

Swede-O Universal

Swede-O Padded Ankle Support

The following items do not qualify as exempt orthotic devices. Tax will therefore apply to the sale of these items.

Orthopedic Product Sales

Healers Heel Silicone Cups

Kool Kubes

Kool Kube Ice Cubes and Mats

Orthoglass

Fiskars Razor-edge Scissors

Parker Medical Supply

UCO 4PP Heal Bed foot Orthotic System
UCO Pre-Molded Foot Orthotics

Chattanooga Corporation

Viscolas Foot Orthotics –
Full-Cushion Insole
Heel Cushions
Heel Spur Cushions
Metatarsal Pads
Longitudinal Arch Pads
Corrective Heel Wedges
Neuroma Pads

Toe Crest Pads
Viscolas Hand Exerciser
Viscolas Waffle Pattern Fabric

If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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