

BOARD OF EQUALIZATION

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law

DECISION AND RECOMMENDATION

Petitioner

The above entitled matter came on regularly for hearing on April 21, 1981 in Oakland, California. William Low, Hearing Officer.

Appearing for the Petitioner: X-----

Appearing for the Board: Lawrence H. Woolslayer, District Principal Auditor

Protested Item

(Audit Period July 1, 1977 to June 30, 1980)

Sale of drug items to shipping lines
Claimed as exempt prescriptions for Resale disallowed \$19,995

Contentions

Sale of medicines to seagoing vessels are exempt in accordance with Regulation 1591 (a)(4), "sold to health facility for the treatment of a human being." Any oceangoing vessel has a hospital, even though it may only have two beds. The master or first mate, acting as physician of a seagoing vessel, controls and prescribes all medicines.

Summary of Petition

Petitioner is a partnership, whose business is a drug store.

The audit disallowed sale of drug items to shipping lines claimed as exempt prescriptions for resale. The audit staff's position is that the ship's medical officer (master or first mate of the ship) is not a physician as used in Regulation 1591, therefore, the sales to the shipping lines are taxable.

X----- states his basic position of the contention, is contained in his letter of February 3, 1981 which is summarized under "contentions" above. Basically, X----- alleges that any seagoing vessel has a hospital which falls within the meaning of a "Health Facility" in Regulation 1591(g). Federal and international law does not require a licensed physician and surgeon be carried on each voyage for vessels with less than 30 or 40 persons aboard and the master or first mate, specifically schooled in the dispensing of drugs for the need of the ship's crew acts as the physician. The master or first mate of the vessel at sea should be accepted within the meaning of a "licensed physician" as provided in the Regulation, 1591.

Analysis and Conclusion

The "licensed" physician as used in section 6369 of the Revenue and Taxation Code means a person who has been issued a certificate under the State Medical Practice Act of 1913 by the Board of Medical Examiners of the State of California. It is our opinion that the master or first mate of the ship, who is not a "licensed" physician or "registered" pharmacist, acting as a physician and pharmacist on the ship is not within the meaning of the "licensed" physician or "registered" pharmacist used in section 6369 of the Revenue and Taxation Code and Regulation 1591. It follows that exemption from tax as provided in Revenue and Taxation Code section 6369 as implemented by Regulation 1591 is not applicable.

It is also our conclusion that the customer's sick bay is not a qualifying health facility within the meaning of Regulation 1591(a) (4). Paragraph (g) of the regulation provides that the term health facility has the meaning provided by Health and Safety Code 1250. Such facilities as defined therein are required to be licensed and regulated by the State of California.

Recommendation

Redetermine the liability without change.

Hearing Officer

May 20, 1981