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May 28, 1993

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*Executive Director*

Ms. D--- B---  
The H--- G---  
XXXX --- --- Highway, Suite XXX  
--- --- ---, California XXXXX

Re: Syringes

Dear Ms. B---:

I am responding to your letter to me of April 14, 1993. You requested advice regarding the application of sales and use tax to sales of Steri-Strips, also called Cover Strip, Suture Strip, and Suture Strip Plus. Since you did not identify the taxpayer, this letter does not constitute specific written advice to the taxpayer under Revenue and Taxation Code Section 6596. Rather, it constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts.

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ..." (§ 6091.) "Exemptions from taxation must be found in the statute." (Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 PO.2d 201.]) "The taxpayer has the burden of showing that he clearly comes within the exemption." (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Prescription Medicines.

Section 6369, interpreted and implemented by Title 28, California Code of Regulations, Regulation 1591, provides that 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).) Subdivision (b)(1) defines "medicine" to "mean and include 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, Regulation 1591(c)(2) adds that "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." (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) As a rule, then, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines.

Regulation 1591(b) does provide that certain items which might otherwise be considered as being devices, etc., are defined as "medicines." Sub-division (b)(2) provides that sutures, whether or not permanently implanted, are considered "medicines." We have previously determined that "sutures" means only those items-i.e., silk thread, wire, catgut, etc - used in the surgical uniting of two surfaces by means of stitches. (See, The Pharmacopeia of the United States, pp.689-693). Regulation 1591(c)(2) specifically excludes bandages and dressings from the definition of "medicines." Industry literature clearly states that Steri-Strips are not sutures. For these reasons, we have held since at least 1974 that such adhesive skin closures are not "sutures" for the purpose of the sales and use tax law. Therefore, tax applies to the sale of such skin closure adhesive property.

One reservation. You do not describe how these items are used. Sales of such adhesives which are permanently implanted in the body and are absorbed by it have previously been determined to be exempt under the provisions of Regulation 1591(b)(2).

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid  
Tax Counsel