



STATE BOARD OF EQUALIZATION

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October 26, 1990

S--- T---, Director
Division of Health Systems and Special Studies
Office of Demonstrations and Evaluations
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XXXX --- Boulevard
---, Maryland XXXXX

Re: Therapeutic Shoe Demonstration

Dear Mr. T---:

This is in response to your letter of August 15, 1990. You have requested clarification of the correct application of tax to therapeutic shoes supplied under the Medicare Therapeutic Shoe Demonstration.

As we understand it, currently, Medicare is conducting a congressionally mandated Demonstration to investigation whether Medicare should cover therapeutic shoes for diabetic patients with foot problems. The Medicare Therapeutic Shoe Demonstration requires that the patient be certified as a diabetic by the physician who manages the diabetic conditions, and a physician must prescribe the therapeutic shoes prior to admittance into the Demonstration. Further, to become an authorized shoe supplier in the Medicare Therapeutic Shoe Demonstration, the shoe supplier must agree to accept the Medicare payment as full payment of benefits. Recently an authorized shoe supplier for the Medicare Therapeutic Shoe Demonstration called because the California Board of Equalization was requesting that sales tax be levied on therapeutic shoes supplied to Medicare beneficiaries in the demonstration.

According to the copy of the enabling legislation you enclosed in your letter, the Demonstration provides for the furnishing of custom molded shoes and extra depth shoes and inserts.

The California Sales and Use Tax Law specifically provides the following:

“Orthopedic shoes and supportive devices for the foot are not exempt unless they are custom-made biomechanical foot orthoses or are an integral part of a leg brace or artificial leg.”

“The term ‘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 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 are assuming for purposes of this analysis that the shoes and inserts furnished by the therapeutic shoe demonstration do not meet the above criteria. As such, even though the shoes are furnished under a physician’s prescription, tax will apply to the sale of such shoes and inserts absent another provision of law. We have previously determined that the sale of an item insured pursuant to Part B of the Medicare Act where the claim of the person for reimbursement is assigned to the supplier and the supplier files a claim with a carrier are not exempt sales to the United States.

It is unclear from the facts presented how the shoes and inserts are billed. Does the patient file a claim with Medicare? You state the suppliers may only charge the amount set by the Demonstration project. Are they reimbursed directly by Medicare?

In summary, based on the information you have provided, it does not appear that the sale of the therapeutic shoes and inserts in question qualifies as either the sale of an exempt medicine under Revenue and Taxation Code section 6369 or an exempt sale to the United States Government. As such, tax properly applies to the sale of the shoes and inserts by authorized shoe suppliers.

We trust this answers your questions. If we can be of further assistance, please write this office again.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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