

**M e m o r a n d u m****425.1060**

To: L. P. Salcedo  
Return Analysis Section (MIC:35)

Date: December 15, 1995

From: Kelly W. Ching  
Staff Counsel

Subject: X-----

This is in response to your memorandum dated October 10, 1995 regarding the application of tax to sales of durable medical equipment. You state:

"The taxpayer has been exempting from tax computation the durable medical equipment which has been purchased with a prescription.

"Does the durable medical equipment described by the enclosed brochures qualify as exempt medical devices?"

The brochures attached to your memorandum describe two pieces of personal mobility equipment, the "Amigo Deluxe" and the "Hoveround." Both products are described as being meant for indoor as well as outdoor use. People are pictured sitting in the models as they perform activities such as working in an office, collecting mail from a mailbox, relaxing outdoors, and exiting a van using a ramp.

**DISCUSSION**

As you know, retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code sections 6369 and 6369.2 provide the exemptions relevant to answering your question.

As explained in Regulation 1591, section 6369 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 tax. (Reg.1591(a).) Subdivision (b)(1) of Regulation 1591 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." Since an article of durable medical equipment is in the nature of an appliance, device, or other mechanical, electronic, or physical piece of equipment, it is not a medicine under section 6369; therefore, sales of such articles are not exempt from tax under section 6369.

However, as explained in subdivision (k) of Regulation 1591, section 6369.2 provides that tax does not apply to sales of wheelchairs when sold to an individual for the personal use of that individual as directed by a licensed physician. We have previously concluded that electric three-wheel devices similar to the personal mobility models pictured and described in the brochures you provided are essentially motorized wheelchairs. It appears from the pictures and descriptions in the brochures that the models at issue here are used for the same purposes as the purposes for which wheelchairs are used; therefore, they also qualify as wheelchairs. This means that when either the "Amigo Deluxe" or the "Hoveround" is sold to an individual for that individual's personal use as directed by a licensed physician, sales to that individual of either of those models would be exempt from tax under section 6369.2.

With respect to any other model of personal mobility equipment, we would need to consider each model on a case-by-case basis in order to determine whether or not it would qualify as a wheelchair the sale of which would be exempt from tax under section 6369.2. Other motorized pieces of equipment that appear similar to those at issue here might include devices which would not be considered wheelchairs. The sales of motorized pieces of equipment not considered wheelchairs would not be exempt from tax under section 6369.2.

If you have further questions, please feel free to write again.

KWC:cl

Cc: X----- District Administrator