



STATE BOARD OF EQUALIZATION

October 26, 1978

X-----

Dear Mr. X-----:

This is in response to your letter of September 20, 1978. Your inquiry concerns the correct application of tax to the sale of certain medical items by chiropractors. Additionally, you wish to know whether or not you are required to register as a retailer and report and pay tax to the Board.

As we understand it, you are a California-licensed doctor of chiropractic. You have been told by the local office of the Board that you must register as a retailer with the Board and report and pay tax on any tangible personal property you sell to a patient.

Specifically, you wish to stock lumbo-sacral supports and cold packs, and to be able to supply them on the premises to patients with acute low-back pain. You estimate the need to occur 5 to 20 times per year. You feel that "the cost of a license and expense of paperwork in collecting sales tax in this infrequent situation would be prohibitive." The alternative is to have an acute patient, who is in severe pain, drive across town and wait in line at a surgical supply house in order to procure needed therapeutic devices which you feel is "contra-indicated and detrimental to the health of the patient."

You note that under Sales and Use Tax Regulation 1591, a licensed physician and surgeon, dentist or podiatrist may provide a patient with these same lumbo-sacral belts and cold packs without needing a sales tax permit or collecting tax reimbursement. You state that you "realize that Regulation 1591 provides guidelines for prescription medicines and that a doctor of chiropractic does not have the authority to prescribe drugs; however, he has the authority under California license to recommend and use cervical and sacral supports and therapeutic devices such as cold packs in the treatment of his patients." You feel that it would be to the benefit of the patient, were chiropractors allowed a no-tax no-license provision for therapeutic items which are provided for the patient and which are therapeutic items authorized for chiropractic use under provisions of California law. You point out that the law provides this beneficial situation for patients under the care physicians and surgeons, dentists and podiatrists, and you believe

it would be fair and nondiscriminatory to provide this same beneficial situation for patients of doctors of chiropractic.

You wish us to review your request for the inclusion under Regulation 1591 of doctors of chiropractic in the list of licensed practitioners who may provide therapeutic items to their patients without becoming involved in merchandising licenses and tax collections.

We note that with respect to items supplied by chiropractors during the course of their professional services, for which no separate charge has been made, it has been our position that chiropractors are the consumers of such items. Thus, tax applies to the sale of such items to chiropractors, but tax does not apply when the items are supplied to a chiropractor's patient if a separate charge has not been made for the items. If, however, a separate charge is made for items supplied to patients by chiropractors, then the chiropractor is considered a retailer of such items. Accordingly, the chiropractor in such a situation is required to register as a retailer and report and pay tax to the Board. The above information correctly describes the law as it is presently in effect. However, on September 26, 1978, Assembly Bill 2563 (Ch. 1182, Stats. 1978) was signed by the Governor. This bill adds Section 6018.4 to the Revenue and Taxation Code. Effective January 1, 1979, a licensed chiropractor will be considered a consumer with respect to, vitamins, minerals, dietary supplements, and orthotic devices used or furnished by him in the performance of his professional services.

Therefore, effective January 1, 1979, the problem which you describe in your letter, with respect to such items as vitamins, minerals, dietary supplements and orthotic devices, used or furnished by you in the performance of your professional services does not exist any longer regardless of whether or not a separate charge is made by you when these items are supplied to your patients.

We note that this new legislation deals only with certain items, vitamins, minerals, dietary supplements and orthotic devices; therefore, if other items are sold by chiropractors and a separate charge is made, they will not be considered consumers of the items. It will then be necessary for a chiropractor under such circumstances to register as a retailer and report and pay tax to the Board. For example, under the new legislation a chiropractor may sell or supply a lumbo-sacral support to one of his patients. Since lumbo-sacral supports qualify as orthotic devices, the chiropractor will be considered the consumer of the supports, and tax will not apply when the supports are transferred to the patient regardless of whether or not a separate charge is made. Under the new legislation, an item not qualifying as an orthotic device, such as a cold pack or some other type of "therapeutic device," will be treated in the same manner as under current law, and tax will apply if a separate charge is made for the item.

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

Very truly yours,

Mary C. Armstrong
Legal Counsel

MCA:ba

bc: Audit Evaluation & Planning Unit
Santa Rosa – District Administrator