

**STATE BOARD OF EQUALIZATION**

(916) 445-3723

October 25, 1978

Dear _____,

Your letter of September 26, 1978, to Mr. Miletta, has been referred to the Board's legal staff for attention.

You take the position that your furnishing of an item to a person insured pursuant to Part B of the Medicare Act is not exempt from sales tax as a sale to the United States. After considering your contentions, the pertinent provisions of the Medicare Act (Part B - Supplementary Medical Insurance Benefits for Aged and Disabled, 42 U.S.C.A. §1395 j et seq.), and the position of a representative of the United States Department of Health, Education and Welfare, which administers the Medicare Act, we have concluded that you are correct.

Under Part B of the Medicare Act, there is established a voluntary insurance program to provide medical insurance benefits for aged and disabled individuals who elect to enroll under the program, which is financed from premium payments by enrollees together with contributions from the federal government.

The transactions here in question are those in which an insured beneficiary acquires an item from a supplier such as yourself and assigns to the supplier his right to reimbursement, which is a percentage of the reasonable cost. The supplier files the claim with a "carrier," i.e., a fiscal intermediary provided for under the act to carry out some of the administrative functions of the Department of Health, Education and Welfare.

Your position that the supplier is not by its actions entering into a contract with the United States and that there is no sale by the supplier to the United States is confirmed by a letter of July 7, 1978, from the San Francisco Regional Office of the Department of Health, Education and Welfare to _____ of _____. The letter was signed by John L. O'Hara, Jr., Program Officer - Contractors, and a copy was sent to us. As you have pointed out and as Mr. O'Hara has confirmed, Section 5213 of the Medicare Carriers Manual makes it clear that a sales tax is accepted as a part of the beneficiary's medical expense for which he is responsible and for which reimbursement is made.

Under the circumstances, with particular emphasis on the fact that a representative of the federal agency involved concurs with your view as a supplier that there is no sale to the United States and that sales tax does apply, we consider it appropriate to accept that view. Certainly the concurrence of the parties involved as to the nature of their relationship must be given great weight.

Sincerely,

Thomas P. Putnam
Assistant Chief Counsel