



STATE BOARD OF EQUALIZATION

April 9, 1991

Mr. W--- H. S---, Superintendent
A--- L--- I--- Company
Medicare Administration M323
XXX --- Avenue
---, Connecticut XXXXX

Dear Mr. S---y:

As you know, your letter to our Santa Rosa District office has been referred to the Legal Division for response. You serve as a Medicare contractor through your office in ---. You had been told that you should exercise an exemption from state sales tax whenever goods or services are purchased with Medicare funds. You note that 100 percent of the costs of operating the --- office are for the Medicare program. You ask for the requirements for eligibility for tax exempt status.

It is not entirely clear from your letter whether your question relates solely to the property purchased by A--- for use in administering the Medicare program or whether your question also relates to the property and services provided to patients covered by Medicare. Enclosed are copies of our annotations 505.0820 (8/22/66) and 505.0840 (10/25/78). These annotations explain the application of sales tax to sales of property to patients covered by Medicare. The same rules would apply to Medicare coverage administered by a contractor such as A---. The remainder of this opinion relates to your purchases of property for A---'s use in administering the program.

You cite a provision from the tax code of the State of Connecticut which establishes that you are an instrumentality of the United States when administering the Medicare program for purposes of the State of Connecticut. As you know, each state's sales and use tax law is different. The relevant exemption in California is set forth in Revenue and Taxation Code section 6381, which exempts from sales or use tax the sale of tangible personal property to: a) the United States, its unincorporated agencies and instrumentalities; and b) any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

Unlike Connecticut, California does not have a statutory provision which expands the definition of "instrumentality of the United States" beyond the definition given to that term by the United States. You are not the United States or its unincorporated agency or instrumentality and your purchases therefore are not exempt under subdivision (a) of section 6381. You are not an incorporated agency or instrumentality of the United States that is wholly owned by the United States or by a corporation wholly owned by the United States and your purchases therefore are not exempt under subdivision (b) of section 6381.

You have included a copy of a request for tax exemption executed by the Associate Regional Administrator of the Division of Medicare of the Health Care Financing Administration. That request states:

"The contractor may be subject to State sales taxes imposed upon its purchases of goods or services. Such taxes incurred by the contractor in the conduct of its private insurance business constitutes a legal obligation to the State as may be imposed by State law.

"However, the United States is not subject to State sales taxes in its purchases of goods or services. The designated contractor should exercise any exemption from taxes available under State law to the United States and its agencies whenever the contractor makes purchases intended solely for the Medicare Program.

"The exemption from taxes should be exercised whenever goods or services are purchased with Medicare funds. Purchases of durable goods in which title vests in the contractor might not be entitled to an exemption from taxes under State law. Such durable goods are not purchased with Medicare funds even though the costs might be allocated as depreciation.

The first paragraph quoted above quite clearly shows that the United States did not intend to extend its sovereign immunity to A--- when you are performing your duties as a Medicare contractor. The second and third paragraphs quoted above seem to indicate that title to some property you purchase may pass to the United States prior to your use. If this were the case, you would be regarded as purchasing that property for resale to the United States. Since tax only applies to retail sales and a retail sale is a sale for any purpose other than resale in the regular course of business, the sale to you for immediate resale to the United States would not be subject to sales tax. (See Rev. & Tax. Code §§ 6007, 6051.) Of course, your sale to the United States would not be subject to sales tax pursuant to section 6381. We do not have sufficient information to ascertain if this analysis applies to any of your activities. It is also clear from the last paragraph quoted above that some of the property A--- purchases for its --- office will not be sold to the United States prior to use. Rather, the sales of those items to A--- would be retail sales and would not be exempt sales to the United States.

Mr. William H. Shay

-3-

April 9, 1991
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After reviewing this letter and the enclosed information, feel free to write again if you have further questions. If you do so, please include a copy of the relevant contract (--- - XX-XXX-X) and citation to the relevant contractual provisions and to the federal statutory and regulatory provisions that relate to your inquiry.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:cl

Enclosures