

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)

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November 4, 1994

REDACTED TEXT

Dear REDACTED TEXT:

I am responding to your letter of August 16, 1994. You ask whether sales of the REDACTED TEXT Medical Emergency Response Card which you distribute to retailers for sale to the public is subject to sales tax. You refer to the letter of June 8, 1994 from the Assistant Chief Counsel Gary J. Jugum who advised you that sales tax did not apply to the sale of debit telephone cards. You enclose a copy of the brochure describing the "REDACTED TEXT Medical Emergency Response System." The customer provides his or her medical history and medical data to REDACTED TEXT by completing the member information forms. The customer may then arrange by phone for electronic transmission of the customer's medical history and medical data from REDACTED TEXT to physicians and other authorized parties. The card also serves as a telephone debit card. The customer prepaays a certain amount and funds are deducted from that prepaid amount for any telephone service provided.

Retail sales of tangible personal property in California are subject to sales tax measured by the gross receipts from the sale, unless the sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, use tax measured by the sales price of the tangible personal property sold, applies to the use of that property purchased for use in California. (Rev. & Tax. Code §§ 6201, 6401.) On the other hand, the charge for providing a service is not subject to sales or use tax, even though some tangible personal property is incidentally transferred. (Reg. 1501.)

With respect to your electronic transmission of medical information from REDACTED TEXT to the authorized parties, we view this, as the providing of a service to customers who pay you a membership fee and regard the membership card as transferred incidentally to the service. No sales or use tax applies to your charge for that service. You are the consumer of the card and sales or use tax applies to the sale of the cards to you.

Regarding the phone call aspect of the REDACTED TEXT card, Mr. Jugum had previously stated that we do not consider sales of debit cards as sales of tangible personal property within the meaning of the Sales and Use Tax Law. The debit cards are, in legal terms, indicia of their prepaid value. The owner of the card acquires the card as a token of value. To the extent that the REDACTED TEXT Medical Emergency Response Card is used in lieu of prepaid long distance service, the sale of the card is nontaxable. Again, you are the consumer of such cards, and sales or use tax applies to the sale of the cards to you.

If you have additional questions, please do not hesitate to write again.

Very truly yours,

Victor G. Matl
Tax Counsel

VGM:cl
REDACTED TEXT

cc: San Jose District Administrator