

**BOARD OF EQUALIZATION****BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE JOHN CHIANG, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: FEBRUARY 5, 2003, TIME: 9:30 AM

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1****Title: Proposed Regulatory Changes Regarding the Application of Tax to Sales of Clip-on Sunglasses, Regulation 1592, Eyeglasses and Other Ophthalmic Materials****Issue/Topic:**

Should subdivisions (a)(4) and (b)(3) of Regulation 1592, *Eyeglasses and Other Ophthalmic Materials*, be amended to clarify when physicians and surgeons, optometrists, and dispensing opticians make taxable retail sales of clip-on sunglasses?

Committee Discussion:Action 1, Consent Items

There was no discussion on this item.

Action 2, Authorization to Publish

There was no discussion on this item.

Committee Action/Recommendation/Direction:Action 1, Consent Items

The Committee approved all consent items.

Action 2, Authorization to Publish

The Committee recommended that the Board authorize publication of the amendments to Regulation 1592 as adopted in the above action. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. A copy of the proposed amendments to Regulation 1592 is attached.

Regulation 1592. Eyeglasses and Other Ophthalmic Materials.

(a) Physicians and Surgeons and Optometrists.

(1) In General. A physician and surgeon or optometrist is the consumer of ophthalmic materials including eyeglasses, frames, and lenses used or furnished in the performance of his/her professional services in the diagnosis, treatment or correction of conditions of the human eye. Tax applies with respect to the sale of such materials to physicians and surgeons and optometrists.

(2) Filling Prescription of Another Physician and Surgeon or Optometrist. When an optometrist fills a prescription prepared by another optometrist or by a physician and surgeon, the optometrist who fills the prescription is the consumer of the glasses, frames, and other materials and tax applies with respect to the sale of such materials to him/her.

(3) Replacement Lenses and Frames. A physician and surgeon or optometrist is also the consumer of lenses and frames furnished to patients as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed for the patient pursuant to an eye examination, and tax applies to the sale thereof to him/her.

(4) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, including clip-on sunglasses, are furnished by a physician and surgeon or optometrist pursuant to a prescription for a particular class of plano or for the treatment or correction of conditions of the human eye following, and as a result of, a diagnosis made by him/her in an examination and refraction he/she is the consumer of the plano lenses and frames or sunglasses, and tax applies with respect to the sale thereof to him/her. In all other instances the physician and surgeon or optometrist is the retailer of such lenses and frames or sunglasses, and tax applies to ~~his~~the gross receipts from such a retail sale.

(b) Dispensing Opticians.

(1) In General. A registered dispensing optician is the consumer of ophthalmic materials including eyeglasses, frames, and lenses dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist. Tax applies with respect to the sale of such materials to the dispensing optician.

(2) Replacement Lenses and Frames. A dispensing optician is also the consumer of lenses and frames furnished as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed by a physician and surgeon or optometrist.

(3) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, including clip-on sunglasses, are dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist for a particular class of plano, the dispensing optician is the consumer of the lenses and frames or sunglasses, and tax applies to the sale thereof to him/her. In all other instances the dispensing optician is the retailer of such lenses and frames or sunglasses, and tax applies to the gross receipts from such a retail sale.

(c) Pharmacists.

(1) In General. Operative January 1, 1998, a licensed pharmacist is the consumer of replacement contact lenses dispensed pursuant to a prescription prepared by a physician or optometrist. Tax applies with respect to the sale of such contact lenses to the pharmacist.

(2) Replacement Contact Lenses. For purposes of this subdivision, "replacement contact lenses" means soft contact lenses that require no fitting or adjustment, and that are dispensed as packaged and sealed by the manufacturer.

(d) Definition of Prescription. For the purposes of this regulation a "prescription" means a written formula for ophthalmic lenses or contact lenses prepared by a physician and surgeon or optometrist.

With respect to plano lenses and frames or sunglasses without correction, prescription means a written order for a distinctive type or class of plano identified by numbers or symbols descriptive of a specific tint, color or characteristic.

The prescription shall bear the name and address of the prescriber, the name and address of the patient, and the date of issue.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Pursuant to section 4124 of the Business and Professions Code, with respect to replacement contact lenses dispensed under subdivision (c) above, in addition to the above requirements, operative January 1, 1998, a prescription must:

- (1) Include the state license number of the prescribing practitioner,
- (2) Explicitly state an expiration date of not more than one year from the date of the last prescribing examination, and
- (3) Explicitly state that the prescription is for contact lenses and include the lens brand name, type, and tint, including all specifications necessary for the ordering of lenses.

Reference: Sections 6006 and 6018, Revenue and Taxation Code.

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