

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

3	In the Matter of the Claim for Refund)	
4	Under the Sales and Use Tax Law of:)	
5	ORASURE TECHNOLOGIES, INC.)	Account Number: SC OHB 97-899469
6	Claimant)	Case ID 334390
)	Bethlehem, PA

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8 Type of Business: Manufacturer of medical diagnostic products

9 Audit Period: 10/1/01 – 12/31/04

10	<u>Item</u>	<u>Claimed Refund</u>
11	Claimed exempt sales of medicines	\$66,882

UNRESOLVED ISSUE

13 **Issue:** Whether claimant is entitled to a refund for taxes paid with respect to sales of certain
14 HIV test kits. We conclude that no refund is warranted.

15 Claimant reported (on amended returns) and remitted use tax with respect to its sales of the
16 OraSure HIV-1 Oral Specimen Collection Device (introduced in 1994) and OraQuick Advance HIV-
17 1/2 Antibody Test (introduced in 2004) sold to the California AIDS Clearing House and the Los
18 Angeles Gay and Lesbian Center (collectively “the Center”) during the claim period.¹ Claimant seeks
19 a refund of the use tax it remitted with respect to these sales based on its assertion that the sales
20 qualified for the charitable organization exemption under Revenue and Taxation Code section 6375.²

21 The only aspect of the requirements for exemption, as explained in California Code of
22 Regulations, title 18, section (Regulation) 1570, that is in dispute here is whether the Center used the
23 kits itself to provide testing services, or if instead the Center gave the kits to its clients for their own
24 use. If the Center used the kits to provide testing services, then it would not be regarded as having

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27 ¹ Claimant also sold a third type of test to the Center, OraQuick Rapid HIV-1 Antibody Test (introduced in 2002), but
claimant does not dispute the tax applicable with respect to these sales.

28 ² The Center provided claimant an exemption certificate in July 2005, which is not relevant in the present matter because it
was not timely for the sales at issue.

1 donated the kits (it is undisputed that the Center did not sell the kits) and thus the exemption would not
2 be applicable. If, however, the Center actually gave the kits to its clients for their own use, the Sales
3 and Use Tax Department (Department) would agree that the sales to the Center qualified for the
4 section 6375 exemption.

5 The Department concluded that the Center consumes the kits to provide testing services, in
6 short, that the Center administers the tests. This conclusion is supported by information provided on
7 the Center's website. Claimant submitted in response a declaration signed under penalty of perjury by
8 Darrel Cummings, the Center's Chief of Staff, in which he states that "the donee self administers the
9 test by swabbing their own mouth to obtain oral fluids using the HIV test kit."

10 We note first that simply performing a mouth swap does not equate to obtaining possession of
11 the kit. If the Center actually gave a kit to its client who then used the kit to obtain the sample from
12 him or herself and to personally test that sample, then that would constitute a gift of the kit. However,
13 merely using a device provided by the Center to collect the sample, followed by return of the device to
14 the Center for testing, is not a gift of the device but rather a consumption of that device by the Center
15 to provide its testing services. Thus, we find that the declaration does not state facts showing that the
16 Center donated the subject property purchased from claimant. Furthermore, information on the
17 Center's website clearly explains the process by which the testing is performed by *the Center*. There is
18 no mention on the Center's website that free kits are provided or that a client can self-administer a test.

19 Since the Center purchased the subject property for consumption and not for donation of the
20 purchased property, we conclude that the claimed refund should be denied.

21 **OTHER DEVELOPMENTS**

22 None.

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24 Summary prepared by David H. Levine, Tax Counsel IV
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