

Memorandum

225.0131

To: Mr. Glenn Bystrom

Date: July 10, 1996
and 2/9/81

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed J. D. Dotson's memorandum of February 9, 1981 to [X].

We are in agreement with his conclusion as follows:

Regulation 1592

Thermal and Chemical Care Units. When thermal and chemical care unit are furnished to patients by a physician and surgeon or optometrist as part of the purchase of soft contact lenses furnished in conjunction with professional services, the physician and surgeon or optometrist will be considered the consumer of the thermal and chemical units and tax applies to the sale of the units to the physician and surgeon or optometrist.

When a registered dispensing optician or an optometrist fills a prescription for soft contact lenses prepared by a physician or surgeon or optometrist, and thermal care or chemical care units for soft cell contact lenses are dispensed pursuant to the prescription, the dispensing optician or optometrist will be considered the consumer of such units and tax applies to the selling price of these units to the dispensing optician or optometrist.

In all other cases, the physician and surgeon, optometrist or dispensing optician, is a retailer of such units and tax applies to the gross receipts from the retail selling price of the unit to the patient or customer. Sales of these units by other retailers such as drug stores, are likewise subject to tax. 2/9/81.

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Executive Secretary

February 9, 1981

As a result of the meeting held on January 14, 1981 with you and representatives from the [A] and the information which you presented to us concerning thermal and chemical care units used by patients wearing soft contact lenses, we have reconsidered the application of Section 6018 of the Sales and Use Tax Law, and Regulation 1592 Eyeglasses and Other Ophthalmic Materials to the taxation of these units.

The law and the regulation provide that a licensed optometrist, physician and surgeon or registered dispensing optician is a consumer of, and shall not be considered a retailer within the provisions of this part in the case of a licensed optometrist or physician and surgeon with respect to the ophthalmic materials used or furnished by him, in the performance of his professional services in the diagnosis, treatment or correction of conditions of the human eye, including the adaptation of lenses or frames for the aid thereof, or in the case of a registered dispensing optician with respect to the dispensing of ophthalmic materials.

When thermal and chemical care units are furnished to patients by a physician and surgeon or optometrist as part of the purchase of soft contact lenses, the physician and surgeon or optometrist will be considered the consumer of the thermal and chemical units and tax applies to the sale of the units to the physician and surgeon or optometrist.

When a registered dispensing optician or an optometrist fills a prescription for soft contact lenses prepared by a physician and surgeon or optometrist, and thermal care or chemical care units for soft contact lenses are dispensed pursuant to the prescription, the dispensing optician or optometrist will be considered the consumer of such units and tax applies to the selling price of these units to the dispensing optician or optometrist.

In all other instances, the physician and surgeon, optometrist or dispensing optician is retailer of such units and tax applies to the gross receipts from the retail selling price of the unit to the patient or customer. Sales of these units by other retailers such as drug stores, are likewise subject to tax.

When a physician and surgeon, optometrist or dispensing optician makes retail sales of tangible personal property, he must have a seller's permit issued by this Board and file sales and use tax returns. If he has paid sales tax reimbursement to his supplier on the cost of the units

which he sells, he can claim a tax-paid purchases resold deduction and deduct the cost of the units sold on his sales and use tax return.

In the event a physician and surgeon, optometrist or dispensing optician purchases these units from a supplier who is not engaged in business in California and is not authorized to collect the California tax, and the physician and surgeon, optometrist or dispensing optician does not have a seller's permit issued by this Board, he should obtain from the nearest Board office an appropriate permit to receive consumer use tax returns on which the applicable California State and Local Use Tax can be reported and paid. If he is the holder of a sellers permit, the tax can be reported on his regular sales' and use tax returns.

Failure to promptly obtain a required permit and pay the tax can result in the assessment of delinquent taxes, plus penalty and interest charges.

We will notify our staff of the correct application of tax to thermal and chemical care units for soft contact lenses. We will also send special notice to licensed ophthalmologists, optometrists, and dispensing opticians concerning this matter.

We appreciate your comments and the information which you furnished concerning the nature and use of these units in caring for soft contact lenses. Please let me know if you have any further questions on this matter.

Sincerely yours,

J. D. Dotson
Assistant Executive Secretary

JDD:jh

cc: Mr. Douglas D. Bell
Mr. Gary Jugum
Mrs. Mary Armstrong