

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 324-5589

September 11, 1989

Ms. J--- P---
C--- for B--- H---
XXXX --- Drive #XXX
--- ---, California XXXXX

Dear Ms. P---:

This is in response to your letter of August 2, 1989.

As I understand the facts, you are a licensed hearing aid dispenser. You request our opinion concerning the correct application of tax to your sale of the following items:

1. Hearing aid batteries required to operate hearing aids.
2. Assistive listening devices (T.V. listeners, FM systems, infrared T.V. decoders and frequency enhanced and amplified phones
3. Non-prescription solutions, such as Eargene, X Wax and Dri Aid Kits, to be used in and around the ear for hygiene, wax removal, or for the purpose of drawing moisture from the ear.

The California Sales and Use Tax Law imposes a tax on the gross receipts of retailers from all retail sales of tangible personal property in this state except where such sales are otherwise specifically excluded or exempted from tax by statute (Rev. & Tax. Code § 6051).

Revenue and Taxation Code Section 6018.7 provides that “[a] licensed hearing aid dispenser is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to hearing aids sold or furnished by him or her.” Sales and Use Tax Regulation 1506(e), which interprets and applies Revenue and Taxation Code Section 6018.7, provides as follows:

“...persons licensed as hearing aid dispensers by the Department of Consumer Affairs, Board of Medical Quality Assurance, are consumers of hearing aids furnished or sold by them. The term ‘hearing aid’ includes any necessary accessory or component part of the hearing aid which is fully worn on the body of the user such as cords, connector tubing, ear molds, or batteries, whether the part is sold or furnished separately or in conjunction with the hearing aid. The term also includes replacement and repair parts. Tax applies with respect to the sale of such products to licensed hearing aid dispensers.

“Tax applies to the retail sale of such products by persons who are not licensed hearing aid dispensers.”

The term hearing aid is defined in California Business and Professions Code Section 3305 as “any wearable instrument or device designed for, or offered for the purpose of, aiding or compensating for impaired human hearing.”

Applying the above criteria, it is our opinion that tax does not apply to your sales of hearing aid batteries pursuant to Regulation 1506(e). Sales of hearing aid batteries by someone other than a licensed hearing aid dispenser are subject to tax pursuant to Regulation 1506(e) and Section 6051 of the Revenue and Taxation Code.

We are of the opinion that most of the assistive listening devices you list which pick up acoustical or electronic signals from a person, radio, television or like source and transmit the signal via radio, infrared, or electromagnetic energy to a receiver worn on the body of the hearing impaired person are not hearing aids or necessary accessories or component parts pursuant to Regulation 1506(e) since it is our understanding that the transmitters for these devices are not fully worn on the body of the user. The gross receipts from the sale of these devices are, therefore, subject to tax whether sold by a licensed hearing aid dispenser or other vendor. However, it is our understanding that the Board of Medical Quality Assurance, Hearing Aid Dispensers Examining Committee has concluded that certain fully wearable FM assistive listening devices are hearing aids pursuant to Section 3305 of the Business and Professions Code. These FM systems consist of a microphone and transmitter fully worn on the body of the person speaking to a hearing impaired person and a receiver and attached listening device fully worn on the body of the hearing impaired person. Therefore, it is our opinion that such fully wearable FM assistive listening devices are hearing aids for purposes of Revenue and Taxation Code Section 6018.7 and Sales and Use Tax Regulation 1506(e). Accordingly, a licensed hearing aid dispenser is the consumer of such FM listening devices, and the gross receipts from the dispenser’s sale of these items are not subject to tax. Sales of these types of FM listening devices by vendors, other than licensed hearing aid dispensers, are subject to tax.

Products used to clean a hearing aid or earmold, for wax removal or to keep a hearing aid dry, and other non-prescription solutions to be used around the ear for hygiene, do not qualify under the provisions of Section 6018.7 or Regulation 1506(e) since these items are not hearing aids as defined in Section 3305 of the Business and Professions Code, nor are these items, in our opinion,

necessary accessories or essential component parts to the function and operation of a hearing aid similar to those items described in Regulation 1506(e). Accordingly, the gross receipts from the sale of these items are subject to tax whether sold by a licensed hearing aid dispenser or other vendor.

We trust the above information is helpful. If you have further questions concerning this matter, please write this office again.

Very truly yours,

Mary C. Armstrong
Senior Tax Counsel

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