



STATE BOARD OF EQUALIZATION

To Mr. Glenn Bystrom
From Gary Jugum
Subject Non-Attorney Opinions

I have reviewed Principal Tax Auditor's memorandum of August 23, 1985 to Santa Barbara – District Principal Auditor.

We are in agreement with his conclusion as follows:

Ear Protection. Products such as ear putty or medco-mold which are used to temporarily seal ears to protect the middle ear from the entry of foreign material after eardrum surgery, do not qualify as exempt prescription medicines. 8/23/85

Memorandum

425.0038

To: Santa Barbara District Principal Auditor

Date: August 23, 1985

From: Principal Tax Auditor

Subject: X-----

Your memorandum of August 7, 1985, asked for a ruling on the application of tax to two products: "Ear Putty" and X----- . The products are sold to doctors who furnish them to their patients after surgery of the eardrum and are used as a protection device to prevent foreign matter from entering the middle ear.

We have discussed these products with a member of the legal staff and have concluded that "Ear Putty" and X----- are devices excluded from the definition of a medicine under Regulation 1591(c) (3). These products are not commonly recognized as a substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease. Therefore, they do not qualify for the prescription medicine exemption.

GAB:nc

Memorandum

425.0038

To: Headquarters
Principal Tax Auditor

Date: August 7, 1985

From: Santa Barbara District Principal Auditor

Subject: X-----

In a recently completed audit of this taxpayer, we encountered two products that may or may not be classified as a medicine.

They are Ear Putty and Medco-Mold (see the attached literature) The sales of these products are to doctors who furnish them to their patients after they have had a surgical procedure performed to insert a otological ventilation tube in their patients ear drum. It is used as a protection device to prevent foreign matter (primarily water) from entering the middle ear.

As such, it appears to meet the definition of a medicine as set forth in Regulation 1591 (b) (1) because it is used in the cure, mitigation or treatment of a medical problem. However, it could still be thought of as something like a bandage or other items described as being excluded from the definition of a medicine in (c) (3) of the Regulation.

We are attempting to resolve an audit that is currently in 79-A status, so we would appreciate a reply as soon as possible.

EMR:aw

enclosures

