



STATE BOARD OF EQUALIZATION

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Executive Director

January 26, 1995

X-----

Re: X-----
Sales of Medical Equipment

Dear X-----,

I am answering your letter to me dated December 9, 1944. You ask if your member may sell tangible personal property to X----- enrollees free of tax by taking resale certificates from X-----.

You state that your member provide medical equipment/supplies in the home to persons with disabilities or persons who without proper equipment/supplies would otherwise be hospitalized. Examples of the type of equipment/supplies are wheelchairs, beds, walkers, commodes, oxygen, disposable supplies, and nutrition services. The transaction takes place between the supply company and the patient, but is often billed to, and paid, by X----- has notified X----- members that their California Resale Certificate excludes these transactions from tax and has requested that sales tax be excluded from any future claims submitted to X-----.

You attached a letter which X----- apparently received from X-----, Supervisor of X----- Accounts Payable Department, which indicated that, effective January 1, 1988, X----- -- became the procuring company for X-----, and also for itself. The letter indicates that X----- purchased all non-inventoried, non-construction and non-capitalized goods and materials for resale to the other companies. X----- attached a copy of a blanket resale certificate, dated January 15, 1992, which described the property to be purchased as "articles and supplies required for the operation of Medical Clinics and Hospitals and all support facilities."

OPINION

As you know, the sale of property which the purchaser will re-sell in the regular course of business is excluded from tax. (Rev. & Tax. Code § 6007.) A seller who timely and in good faith takes a resale certificate from a person who is engaged in the business of selling tangible personal property and who holds a California seller's permit is relieved from liability for sales tax or collecting the use tax. (Reg. 1668(a).) Sales and Use Tax Regulations are issued by the Board to aid in the enforcement and administration of the Sales and Use Tax Law and have the force and effect of law. A purchaser who issues a resale certificate, knowing at the time of

purchase that the goods will be consumed rather than resold, is liable for tax and penalties. (Reg. 1669(g).)

We are of the opinion that this resale certificate is not effect to exclude these transactions from sales tax for two reasons. First, it covers only items which X----- intends to purchase for the purpose of resale to its member hospitals and clinics and support facilities. Supplies and support items used in the operation of a medical facility are consumed by the facility, so when X----- sells such items to its member facilities, those sales are at retail. It must pay tax on those transactions. The certificate thus does not cover the kinds of property which your members are selling. Second, under the facts you give, your members are selling medical equipment and supplies directly to the patients. While X----- may be billed and pay for the item, the transaction is directly between the X----- member and the patient. X----- is not purchasing the item for resale to the patient. The fact that a medical insurer is paying for all or part of the transaction does not alter its fundamental nature. (Reg. 1591 (n).) We thus conclude that these sales are not sales to X----- for resale to the patients, but rather they are direct sales from X----- members to the patient and so are at retail. The X----- member must pay tax on all taxable transactions.

I hope the above discussion has answered your question. If you need anything futher, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:sr

Cc: Mr. Ronald L. Dick
CH District Administrator
KH District Administrator