STATE OF CALIFORNIA

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State Controller, Sacramento

JAMES E. SPEED
Executive Director

November 21, 2002

Dear Interested Party :

Enclosed is the *Second Discussion Paper* regarding staff's proposed amendments to Regulation 1592, *Eyeglasses and Other Ophthalmic Materials*. This document provides the background, a discussion of the issue and explains staff's recommendation in more detail. Also enclosed for your review is a copy of the proposed amendment to Regulation 1592 (Exhibit 1).

A second interested parties meeting is scheduled for **December 10, 2002 at 10:00 a.m. in Room 122** to discuss the proposed amendments to Regulation 1592. If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to write to me at the above address or send a fax to (916) 322-4530 before the December 10, 2002 meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. If you plan to attend the meeting on December 10, 2002, or would like to participate via teleconference, I would appreciate it if you would let staff know by contacting Todd MacMurray at (916) 324-2900 or by e-mail at todd.macmurray@boe.ca.gov prior to December 3, 2002. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Any comments you may wish to submit subsequent to the December 10, 2002 meeting must be received by **December 18, 2002**. They should be submitted in writing to the above address. After considering all comments, staff will complete a formal issue paper on the proposed amendments to Regulation 1592 for discussion at the **Business Taxes Committee meeting** scheduled for February 5, 2003. Copies of the formal issue paper will be mailed to you approximately ten days prior to this meeting. Your attendance at the February 2003 Business Taxes Committee meeting is welcomed and encouraged. The meeting is scheduled for **9:30 a.m.** in Room 121 at 450 N Street, Sacramento, California.

Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

We look forward to your comments and suggestions. Should you have any questions, please feel free to contact me at (916) 324-1825.

Sincerely,

Charlotte Paliani
Program Planning Manager
Sales and Use Tax Department

CP:tm

Enclosures

cc: (all with enclosures)
Honorable John Chiang, Member, Fourth District
Honorable Johan Klehs, Member, First District
Honorable Dean Andal, Member, Second District
Honorable Claude Parrish, Member, Third District
Honorable Kathleen Connell, State Controller
Mr. John Thiella, Board Member's Office, Fourth District (MIC 72)
Mr. Steven Kamp, Board Member's Office, Fourth District (MIC 72)
Ms. Jean Alexander, Board Member's Office, First District
Mr. Arnulfo Hernandez, Board Member's Office, First District (MIC 71)
Ms. Rita Perry, Board Member's Office, First District (MIC 71)
Mr. Neil Shah, Board Member's Office, Third District
Mr. Romeo Vinzon, Board Member's Office, Third District
Mr. Matthew Zylowski, Board Member's Office, Third District
Ms. Marcy Jo Mandel, State Controller's Office
Mr. James E. Speed (MIC 73)
Mr. Timothy Boyer (MIC 83)
Mr. Ramon J. Hirsig (MIC 43)
Ms. Janice Thurston (MIC 82)
Mr. Warren Astleford (MIC 82)
Mr. Randy Ferris (MIC 82)
Ms. Trecia Nienow (MIC 82)
Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Steve Ryan (via e-mail)
Ms. Jennifer Willis (MIC 70)
Mr. Dave Hayes (MIC 67)
Mr. Joseph Young (via e-mail)
Mr. Vic Anderson (MIC 40 and via e-mail)
Mr. Larry Bergkamp (via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Laureen Simpson (MIC 50)
Mr. Todd MacMurray (MIC 50)
Ms. Laura Jonoubei (MIC 50)

SECOND DISCUSSION PAPER

Proposed Regulatory Changes Regarding the Application of Tax to Sales of Clip-on Sunglasses

Regulation 1592, *Eyeglasses and Other Ophthalmic Materials*

I. Issue

Should Regulation 1592, *Eyeglasses and Other Ophthalmic Materials*, be amended to clarify how tax applies to sales of clip-on sunglasses?

II. Staff Recommendation

Staff recommends amending subdivisions (a)(4) and (b)(3) to clarify when physicians and surgeons, optometrists, and dispensing opticians make taxable retail sales of clip-on sunglasses.

In addition, staff proposes to make nonsubstantive changes to correct typographical errors in subdivisions (a), (b) and (d) of the regulation.

III. Other Alternative Considered

Make no changes to Regulation 1592.

IV. Background

Regulation 1592 was amended in 1971 to clarify that a physician and surgeon or optometrist who furnishes plano lenses[1] and frames or plano sunglasses pursuant to certain prescriptions, and as a result of a diagnosis made by him/her in an examination and refraction, is a consumer rather than a retailer of such plano lenses and frames or sunglasses.

In 1998, the regulation was amended to conform to a statutory change as a result of SB 13 (Statutes 1997, Chapter 184) which made, under defined conditions, licensed pharmacists the consumers of replacement contact lenses that they sell pursuant to Business and Professions Code section 4124. Also in 1998, language was added setting forth the requirements prescribed in Business and Professions Code section 4124 with respect to the conditions under which a licensed pharmacist may sell replacement contact lenses.

Despite the foregoing amendments, it appears that confusion exists as to when physicians and surgeons, optometrists and dispensing opticians make taxable retail sales of clip-on sunglasses. Some dispensing opticians incorrectly regard their sales as taxable whether or not their clip-on sunglasses are provided pursuant to a prescription. In addition, some physicians and surgeons or optometrists are failing to report tax as retailers on certain retail sales of clip-on sunglasses.

[1] A plano lens has the same curvature on both the front and back of the lens (i.e., a lens with no corrective power).

In that regard, staff has proposed amendments clarifying the application of tax to sales of clip-on sunglasses. Staff's proposed amendments are attached to this Second Discussion Paper as Exhibit 1.

V. Discussion

Regulation 1592 states that, when the requisite conditions are met, physicians and surgeons, optometrists, and registered dispensing opticians are the consumers of, and shall not be considered the retailers of, ophthalmic materials used or furnished pursuant to a prescription for the treatment or correction of conditions of the human eye. That is, tax applies to the sale of such materials to physicians and surgeons, optometrists, and dispensing opticians. In all other instances, the physicians and surgeons, optometrists, and dispensing opticians are the retailers of the ophthalmic materials, and tax applies to their retail sales.

As set forth in the regulation, ophthalmic materials include eyeglasses, frames, lenses, contact lenses, replacement lenses and frames, plano lenses and frames, and plano sunglasses. However, staff believes further regulatory guidance is needed to clarify when physicians and surgeons, optometrists and dispensing opticians make taxable retail sales of clip-on sunglasses. Staff recommends adding "clip-on sunglasses" to subdivisions (a)(4) and (b)(3) to clarify this regulation, as follows:

> **(a)(4) Plano Lenses or Sunglasses (Without Correction).** When plano lenses and frames or plano sunglasses, <u>including clip-on sunglasses,</u> are furnished by a physician and surgeon or optometrist pursuant to a prescription for a particular class of plano or for the treatment or correction of conditions of the human eye following, and as a result of, a diagnosis made by him/her in an examination and refraction he/she is the consumer of the plano lenses and frames or sunglasses, and tax applies with respect to the sale thereof to him/her. In all other instances the physician and surgeon or optometrist is the retailer of such lenses and frames or sunglasses, and tax applies to the gross receipts from such a retail sale.
>
> **(b)(3) Plano Lenses or Sunglasses (Without Correction).** When plano lenses and frames or plano sunglasses, <u>including clip-on sunglasses,</u> are dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist for a particular class of plano, the dispensing optician is the consumer of the lenses and frames or sunglasses, and tax applies to the sale thereof to him/her. In all other instances the dispensing optician is the retailer of such lenses and frames or sunglasses, and tax applies to the gross receipts from such a retail sale.

An interested parties meeting was held on October 15, 2002. One representative from industry was in attendance. This representative agreed that Regulation 1592, especially with the proposed clarifying amendments, clearly sets forth the application of tax to sales of clip-on sunglasses, but indicated a concern that the daily practices of industry may be inconsistent with the regulation. Staff requested that interested parties provide written comments addressing any concerns and

provide suggested regulatory language prior to the second interested parties meeting. No written submissions were received from interested parties subsequent to the October 15, 2002 meeting.

VI. Summary

Staff proposes regulatory language to clarify the application of tax to sales of clip-on sunglasses. Interested parties are invited to comment on staff's proposed revisions and participate in the interested parties meeting scheduled for December 10, 2002 in Sacramento.

Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of 11/20/2002

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State of California

STATE BOARD OF EQUALIZATION

SALES AND USE TAX REGULATION

Regulation 1592. Eyeglasses and Other Ophthalmic Materials.

Reference: Sections 6006 and 6018, Revenue and Taxation Code.

(a) Physicians and Surgeons and Optometrists.

(l) In General. A physician and surgeon or optometrist is the consumer of ophthalmic materials including eyeglasses, frames, and lenses used or furnished in the performance of his/her professional services in the diagnosis, treatment or correction of conditions of the human eye. Tax applies with respect to the sale of such materials to physicians and surgeons and optometrists.

(2) Filling Prescription of Another Physician and Surgeon or Optometrist. When an optometrist fills a prescription prepared by another optometrist or by a physician and surgeon, the optometrist who fills the prescription is the consumer of the glasses, frames, and other materials and tax applies with respect to the sale of such materials to him/her.

(3) Replacement Lenses and Frames. A physician and surgeon or optometrist is also the consumer of lenses and frames furnished to patients as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed for the patient pursuant to an eye examination, and tax applies to the sale thereof to him/her.

(4) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, including clip-on sunglasses, are furnished by a physician and surgeon or optometrist pursuant to a prescription for a particular class of plano or for the treatment or correction of conditions of the human eye following, and as a result of, a diagnosis made by him/her in an examination and refraction he/she is the consumer of the plano lenses and frames or sunglasses and tax applies with respect to the sale thereof to him/her. In all other instances the physician and surgeon or optometrist is the retailer of such lenses and frames or sunglasses, and tax applies to the gross receipts from such a retail sale.

(b) Dispensing Opticians.

(l) In General. A registered dispensing optician is the consumer of ophthalmic materials including eyeglasses, frames, and lenses dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist. Tax applies with respect to the sale of such materials to the dispensing optician.

(2) Replacement Lenses and Frames. A dispensing optician is also the consumer of lenses and frames furnished as duplications or replacements of parts of eyeglasses or contact lenses which were previously prescribed by a physician and surgeon or optometrist.

(3) Plano Lenses or Sunglasses (Without Correction). When plano lenses and frames or plano sunglasses, including clip-on sunglasses, are dispensed pursuant to a prescription prepared by a physician and surgeon or optometrist for a particular class of plano, the dispensing optician is the consumer of the lenses and frames or sunglasses, and tax applies to the sale thereof to him/her. In all other instances the dispensing optician is the retailer of such lenses and frames or sunglasses, and tax applies to the gross receipts from such a retail sale.

(c) Pharmacists.

(1) In General. Operative January 1, 1998, a licensed pharmacist is the consumer of replacement contact lenses dispensed pursuant to a prescription prepared by a physician or optometrist. Tax applies with respect to the sale of such contact lenses to the pharmacist.

(2) Replacement Contact Lenses. For purposes of this subdivision, “replacement contact lenses” means soft contact lenses that require no fitting or adjustment, and that are dispensed as packaged and sealed by the manufacturer.

(d) Definition of Prescription. For the purposes of this regulation a "prescription" means a written formula for ophthalmic lenses or contact lenses prepared by a physician and surgeon or optometrist.

With respect to plano lenses and frames or sunglasses without correction, prescription means a written order for a distinctive type or class of plano identified by numbers or symbols descriptive of a specific tint, color or characteristic.

The prescription shall bear the name and address of the prescriber, the name and address of the patient, and the date of issue.

Pursuant to section 4124 of the Business and Professions Code, with respect to replacement contact lenses dispensed under subdivision (c) above, in addition to the above requirements, operative January 1, 1998, a prescription must:

(1) I~~i~~nclude the state license number of the prescribing practitioner,

(2) E~~e~~xplicitly state an expiration date of not more than one year from the date of the last prescribing examination, and

(3) E~~e~~xplicitly state that the prescription is for contact lenses and include the lens brand name, type, and tint, including all specifications necessary for the ordering of lenses.

History: Section (a)(1) effective September 19, 1947.
Section (b) effective August 1, 1933.
Adopted as of January 1, 1945 as a restatement of previous rulings.
Amended and renumbered March 24, 1970, effective April 29, 1970.
Amended May 4, 1971, effective July 1, 1971.
Amended March 25, 1998, effective April 24, 1998. Added new subdivision (c) and amended renumbered subdivision (d) to incorporate the provisions of Chapter 184, Statutes of 1997.

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