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**STATE BOARD OF EQUALIZATION**

August 21, 1995

RE: Hearing Aid Dispensers

Dear

I am responding to your letter to the state Board of Equalization dated May 3D, 1995. You request advice as to the application of tax to your purchases and sales of hearing aids and related miscellaneous items. You ask three questions: (1) Should you pay tax on your sales of these items?; (2) If you bought them tax paid, do you report tax on your monthly returns?; and (3) If you purchase them tax paid, do you pay tax when you sell these items to your customers? You attached to your letter a copy of a letter dated January 16, 1989, that you wrote to our Audit Evaluation and Planning Unit asking essentially the same questions. You also attached a copy of the response you received, dated February 3, 1989, from Senior Tax Auditor Joan Armenta-Roberts setting forth the rules in this area.

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code section 6051 imposes a sales tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) A "retail sale" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. (§ 6007.) The retailer owes the sales tax but may collect sales tax reimbursement from the purchaser pursuant to agreement. (civ. Code § 1656.1.) Thus, in a transaction subject to sales tax, the buyer may reimburse the seller for the tax the seller pays but does not owe sales tax.

Throughout this letter, we assume, from the context of your letter, that you purchase your hearing aids and accessories from in-state vendors in transactions subject to sales tax. It is, of course, possible that at least some of your purchases are from out-of-state vendors, in which case the applicable tax is the use tax. (§ 6201.) If use tax is the proper tax, you, as the buyer, would owe the tax which the out-of-state seller would have to collect if engaged in business in California. (§ 6203.) This distinction does not, however, affect our analysis as to whether or not tax applies to your own sales of these items.

B. Tax Consequences.

We hereby confirm the opinion of Mrs. Armenta-Roberts. Under Regulation 1506(e) (of which Mrs. Armenta-Roberts sent you a copy), persons licensed as hearing aid dispensers by the Department of Consumer Affairs are consumers of the hearing aids and any necessary and component parts of a hearing aid which is fully worn on the body of the user. This rule has not changed in the intervening years. Your 1995 letter states you are "Board Certified--Hearing Instrument Sciences," and gives your license number. We thus assume that you are licensed as a hearing aid dispenser by the Department of Consumer Affairs. Regulation 1506(e) thus applies to your purchases and sales of such items.

The regulation defines "hearing aid" as including "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." In your 1995 letter you list the following items as being sold in your office: "Battery Testers, Sanitize for hearing aids, Infrasound Listening System, Batteries for Hearing Aids, Otoscopes/Ear lights, Eargene, Telephone Ear Pads, Battery Removal Pens, Ear Wax removal kits, Dri-Aid kits, Wax guard systems, Foam Ear Plugs." Your sales of the batteries are not subject to tax under the regulation, but the remainder of the items do not appear to come within the definition of "hearing aid." Tax thus applies to their sales. We are not sure of the function of the "Infrasound Listening system," and so consider its sale to be subject to tax absent further information.

We note that the above permit number has apparently been closed out and your files destroyed. As you are making taxable retail sales you need to obtain a new seller's permit (§ 6066) and begin reporting and paying tax immediately. (§§ 6451 et. Seg.) You may obtain a seller's permit at the --- --- --- --- California --- I have attached a copy of Board of Equalization Pamphlet No. 73, "Your California Seller's Permit," for your information.

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

Sincerely,

John L. Waid  
Tax Counsel

JLW: sr  
Attachment

cc: --- District Administrator -

May 30, 1995

State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0001

ATTN.: Legal Division

RE: Sales Tax - Within a Hearing Aid Dispenser's Office

Dear Sirs;

I am writing to inquire on the charging of sales tax on certain items that are sold in our hearing aid office. I have been made aware that hearing aids and all components that are worn the body are subject to state sales tax on the acquisition / wholesale cost by myself when not charged by the manufacturer. In regard to miscellaneous items sold there is some questions.

Following is a list of such items that have been sold in our office:

Battery Testers	Otoscopes/Ear lights	Ear wax removal kits
Sanitize for hearing aids	Eargene	Dri-Aid kits
Infrasound Listening System	Telephone Ear Pads	Wax guard systems
Batteries for Hearing Aids	Battery Removal Pens	Foam Ear Plugs

The questions that I have in regard to this is:

1. Do I have to pay sales tax on these items and if so, is it on retail or wholesale?
2. If the item(s) have had sales tax paid on them do I report that I have paid sales tax on my monthly report to the state?
3. When I pay sales tax to the company that I buy from, do I have to charge my customers this sales tax?

I would appreciate any information on the above questions that you may have. These are questions that most dispensers have. Some refuse to handle I sell any products other than hearing aids because of the confusion I lack of understanding concerning this matter.

Thank you for your help in this matter.

January 16, 1989

Audit Evaluation and Planning Unit  
State Board of Equalization  
P.O. Box 942879  
Sacramento, Ca 94279-0001

Dear Folks,

In reviewing the Dec 88 Tax Info Bulletin, I observed the above address with some encouragement-to send comments, etc.

What I need is information that is for all practical purposes very hard to come by. When I reopened by office here in Anderson, some changes in what and how Hearing Instruments & accesories are taxed, if at all, had taken place. I phoned the local tax office, they had some info, I phoned the person who had changed the legislation on taxing Hearing devises, no result. When I try to inquire with other Hearing Instrument Dispenser' on the subject, Most, at least the ones I have approached, seem as ill-advised as I am.

I do have a sellers permit and would be glad to pay whatever tax I may owe. Possibly you may have some descriptive information that would help me, and possibly others, to identify what is and what is not taxable in the Hearing Instrument Field.

Thank You for your help,

February 3, 1989

Dear

Thank you for your letter of January 16, 1989, in which you were responding to our December Tax Information Bulletin article which asked for your comments. In your letter, you requested information regarding the correct application of the sales or use tax on products for the hearing impaired.

California Sales and Use Tax Regulation 1506, "Miscellaneous Service Enterprises," copy enclosed, provides that "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." In other words, licensed hearing aid dispensers should pay tax on the cost of the hearing aids when they purchase them. They should not charge tax at retail to their own customers. Persons who are not licensed hearing aid dispensers are required to charge and report tax on the retail selling price of hearing aids to their customers. The regulation further states that "The term 'hearing aid' includes any necessary accessory or component part of a hearing aid which is fully worn on the body of the user... "

I hope this information is helpful. If you have any further questions, you may wish to contact our --- Office at --- --- --- or write this office again.

Sincerely,

Joan Armenta-Roberts  
Senior Tax Auditor

JAR: jmh  
0269U  
Enclosure: Regulation 1506

State of California  
BOARD OF EQUALIZATION  
SALES AND USE TAX REGULATIONS

Regulation 1506. MISCELLANEOUS SERVICE ENTERPRISES.

Reference: Sections 6006, 6007, 6015, 6018.1, Revenue and Taxation Code.

(a) BARBERS, BEAUTY SHOP OPERATORS, BOOTBLACKS, LAUNDERERS AND CLEANERS.

(1) IN GENERAL. Barbers, beauty shop operators, bootblacks, launderers and cleaners are the consumers of the supplies and other property used in performing their services, and tax applies with respect to the sale to them of the supplies and other property. They are retailers, however, of any such supplies or of used articles or other tangible personal property which they sell to consumers in the regular course of business, and tax applies to the gross receipts from such sales.

(2) RENTALS. Launderers and cleaners are the consumers of linen supplies and similar articles, including towels, uniforms, coveralls, shop coats, dust cloths, and similar items, rented to others when an essential part of the rental contract is the furnishing of the recurring service of laundering or cleaning of the articles rented, and tax applies with respect to the sale to them of such articles.

(b) CIRCULATING LIBRARIES. When circulating libraries, which are engaged in the business of renting books to others, pay tax measured by the purchase price of such books either to the person from whom the books are purchased or to the board, tax does not apply to the amount charged for the rental of such books. Such libraries are retailers of new or used books which they sell to consumers in the regular course of business, and tax applies to the gross receipts from such sales.

(c) DENTISTS AND DENTAL LABORATORIES. Dentists are consumers of the materials, supplies, dental laboratory products and other tangible personal property which they use in performing their services. Tax, accordingly, applies to the sale of the tangible personal property to them.

Dental laboratories are the retailers of the plates, Inlays and other products which they manufacture for dentists or other consumers. Tax applies to their entire charges for such products regardless of whether a separate charge or billing is made for materials and manufacturing services.

(d). GUN CLUBS. Gun clubs are consumers, not retailers, of clay pigeons or blue rocks furnished to members or patrons in connection with trapshooting or similar sports even though the charge for the service is measured by the number of clay pigeons Or blue rocks used. The tax applies with respect to the sale of such property to the clubs

(e) LICENSED HEARING AID DISPENSERS. Effective January 1, 1985 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.

(1) SUMMER CAMPS. The tax applies to gross receipts from the sale of meals or other tangible personal property at summer camps, whether operated by municipal or private corporations, or other parties. When a camp qualifies as a school or educational institution, tax, with respect to meals, applies in the same manner as to schools and educational institutions. To qualify as a school or educational institution for purposes of this regulation, the camp must conduct regularly scheduled classes, with required attendance, in charge of qualified Instructors.

History: Amended July 30, 1986, effective November 7, 1986. In subdivision (h), added explanation that licensed veterinarians are consumers of certain drugs and medicines. In subdivision (h) (1) (A), added definition of term "licensed veterinarian". In subdivision (h) (1) (B), added definition of term "drugs and medicines". In subdivision (h) (1) (C), added definition of term "professional services". In subdivision (h) (2) (A), added explanation concerning application of tax to certain drugs and medicines by licensed veterinarians. In subdivision (h) (2) (B), added explanation that licensed veterinarians are retailers of certain drugs and medicines. The subdivision also specified the correct application of tax to certain charges made for X-rays.

Regulations are issued by the State Board of Equalization to Implement. Interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.