

**STATE BOARD OF EQUALIZATION**

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March 14, 1990

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[B]'s --- ---
XXX --- ---
--- ---, CA XXXXX

RE: S- -- XX-XXXXXX

Dear Mr. [F]:

This is in response to your letter of February 5, 1990. You have requested our opinion regarding the correct application of tax to Chempads.

As we understand it, chempads are pads which contain an anesthetic preparation consisting of lidocaine and menthol for use in conjunction with a transcutaneous electrical nerve stimulator (TENS). They are frequently left on the person of the user after an application. When they are sold in stronger doses, a prescription is required.

As a general rule, medicated dressings or pads qualify as medicines under Revenue and Taxation Code section 6369 if the medication or substance with which the pad is impregnated qualifies as a "medicine." We are therefore of the opinion that Chempads qualify as exempt prescription medicines when they are sold in sufficient doses so as to require a prescription. It does not appear that the Chempads which are sold on a non-prescription basis would qualify as exempt prescription medicines because the lidocaine and menthol is not in sufficient quantity to qualify as a "medicine."

We note that we are unable to determine whether the Chempads must be used in conjunction with a TENS machine or whether they are optional in certain cases. If they are a required part of a TENS machine (i.e., the TENS machine cannot function without the pads), they would be exempt from tax because the TENS is an exempt prosthetic device.

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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