



STATE BOARD OF EQUALIZATION

916-322-3684

August 31, 1988

This is in reply to your letter of July 18, 1988, requesting an opinion concerning the correct application of tax to sales of a certain electronic neurological stimulation system.

X----- is a distributor of an item called the High Voltage Pulsed Galvanic Stimulator (trade name "GV II"). It is my understanding that the "GV II" requires a physician's prescription and is used to promote pain control or neuromuscular stimulation via the passage of small electrical currents through the patient's skin. Further, the "GV II" is designed to be fully worn on the body of the user. Finally, it is my understanding that X----- will sell the "GV II" to individuals only upon presentation of a prescription from their doctor. You inquire whether such sales are taxable.

A retailer's retail sale of tangible personal property in this state is subject to sales tax unless the sale is specifically excluded or exempted from taxation by statute (Rev. & Tax. Code S 6051). Revenue and Taxation Code section 6369 exempts prescription medicines from sales tax. "Medicines" is defined by section 6369(b) as "any 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 and which is commonly recognized as a substance or preparation intended for that use." Section 6369(b)(2) specifically excludes from this definition of medicines articles which are in the nature of instruments, apparatus, contrivances, appliances, devices, or other mechanical or electronic equipment. Section 6369(c) provides that, notwithstanding the definitions set forth in subdivision (b), as discussed above, -medicines· includes prosthetic devices designed to be worn on or in the person of the user to replace or assist the functioning of a natural part of the human body, with certain exceptions. (Rev. & Tax. Code § 6369(c)(4).)

On July 1, 1982, the Board ruled that transcutaneous electrical nerve stimulators (TENS) which are fully worn on the body of the user are prosthetic devices within the meaning of section 6369(c)(4), and that tax does not apply to their sale when pursuant to prescription; however, TENS units which are not fully worn on the body of the user do not qualify as prosthetic devices, and tax applies to their sale. (See BTLG Annot. 425.0885 1/15/77, 4/1183.)

A TENS unit is designed to relieve pain through the use of electrical impulses which are emitted from the unit directly to the area of the body in which the patient is experiencing pain. It is our opinion that the described "GV II" performs the same function as a TENS unit and is therefore equivalent to that unit. Accordingly, since the "GV II" is designed to be fully worn on the body of the user, tax does not apply to its sale when pursuant to a physician's prescription.

I hope the above information is helpful. If you have any further questions on this topic, please do not hesitate to write this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr

Bc: San Francisco District Administrator