

**STATE BOARD OF EQUALIZATION**

February 13, 1991

X-----

Dear X-----,

This is in response to your letter of February 1, 1991. You have sought our opinion on behalf of your client, X-----, as to whether a device which the client distributes qualifies for exemption from sales tax under California Revenue and Taxation Code section 6369(c)(4).

We understand that X----- distributes a relatively new type of device known as an interferential stimulator. These devices are generally worn on the body and, through the use of electromagnetically induced current, are used to promote the union of mandibular fractures without the necessity of surgery. These devices are typically prescribed by physicians and rented by their patients from X----- and other companies engaged in the business of leasing and renting medical devices.

Generally, durable medical equipment is taxable. However, Revenue and Taxation Code section 6369(c)(4) provides that the term "medicines" includes certain 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. This agency has considered application of this exemption to a similar device, a transcutaneous electrical nerve stimulator (TENS). Our Business Taxes Law Guide Annotation 425.0885 cites that "transcutaneous electrical nerve stimulators, which are fully worn on the body of the user, are prosthetic devices as that term is used in -section 6369(c)(4)." The annotation further recites "transcutaneous nerve stimulators which are not fully worn on the body of the user do not qualify as prosthetic devices and tax applies to their sale."

It is our opinion that the interferential stimulator in question likewise qualifies for the prosthetic device exemption. Tax does not apply to these devices when prescribed under the conditions described in section 6369, to the extent the device prescribed is to be worn by the patient.

Very truly yours,

Gary J. Jugum  
Assistant Chief Counsel

GJJ:sr