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**STATE BOARD OF EQUALIZATION**

916-445-8485

April 6, 1988

Dear X-----

This is in response to your letter dated February 1, 1988 to the Board's legal staff. You have requested a written ruling concerning whether Cryomat and Cryopak are "medicines" as defined by Revenue and Taxation Code section 6369 and Sales and Use Tax Regulation 1591 so that the sale of the two products would be exempt from tax. I must note that only the Board can issue rulings whereas the legal unit provides opinions.

As we understand the facts, X----- distributes two products, Cryomat and Cryopak. Both are reusable liquid filled therapeutic ice products used by medical doctors, physical therapists, and others for the treatment of such injuries as contusions, sprains, strains, etc. Both products are externally placed on the part of the body where treatment is desired. The only difference between Cryomat and Cryopak is in their configuration. Cryomat consists of an 11x16 sheet of liquid filled pouches and Cryopak has pouches individually separated from each other to allow greater ease and versatility in treating acute contours of the human body.

Except where the sales are specifically exempted by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this State (Rev. & Tax. Code § 6051). Likewise, use tax is imposed on the storage, use, or other consumption in California of tangible personal property purchased from any retailer for storage, use, or other consumption in California unless otherwise exempted from taxation by statute (Rev. & Tax. Code § 6201). However, use tax is never imposed as a duplicate tax along with sales tax because any use of property in California is exempt from use tax if the gross receipts from the sale of the property are included in the measure of the sales tax (Rev. & Tax. Code § 6401).

Revenue and Taxation Code section 6369(a) provides that the gross receipts from the sale, storage, use, or other consumption in this State of medicines are exempted from taxes. Subsection (b) of that same Code section provides:

"Medicines" as used in this section mean and include 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 such use...

“Substance” or “preparation” is defined to mean a chemical compound (the Random House College Dictionary, revised edition). Our position is that in order for such a compound to be treated as a medicine when applied externally, it must be absorbed to some extent by the body.

We are of the opinion that the use of Cryomat and Cryopak is not an external application of a substance or preparation as contemplated by Revenue and Taxation Code section 6369(b). The injured area being treated will experience a cold sensation resulting from the cold liquid pouches, however, no ingredient or comparable component of Cryomat or Cryopak is absorbed by the body. Therefore, Cryomat and Cryopak are not “medicines” and their sale is subject to tax.

Since you are a retailer of Cryomat and Cryopak, you are required to apply for a seller’s permit and to file tax returns and remittances with the Board (see Rev. & Tax. Code §§ 6066, 6452, 6453, and 6454). We suggest you contact the Board’s field office located in San Jose at 100 Paseo de San Antonio, Room 307, San Jose, California 95113-1477, telephone number (408) 277-1231. Our office personnel will be happy to assist you in completing the necessary paperwork.

I have enclosed Sales and Use Tax Regulation 1591 (Prescription Medicines) for your information. If you have any further questions, please feel free to write again.

Very truly yours,

E. L. Sorensen, Jr.  
Senior Tax Counsel

ELS:md  
Enclosure

Bc: Mr. Robert Stipe  
San Jose – District Office