

M e m o r a n d u m**425.0547.400**

To: Mr. Glenn A. Bystrom
Principal Tax Auditor

Date: December 6, 1989

From: Mary C. Armstrong
Legal

Subject: Noninvasive Temporary Pacemakers

You have requested our opinion regarding whether a Zoll Noninvasive Temporary Pacemaker (NTP) qualifies as an exempt medicine under Revenue and Taxation Code section 6369.

As we understand it, the NTP is a self-contained cardiac pacing device weighing approximately 18 pounds which delivers an electric pulse to the heart via two specially designed electrodes. It is the size of a small portable television and measures 6" H x 12" W x 15" D. In addition to serving as a pacemaker, it also is a portable ECG machine and contains a recorder for monitoring cardiac response. The NTP is not fully worn on the person of the user but is attached by means of the electrodes. The hearing officer concluded that (1) the electrodes and the NTP should be considered one integral self-contained device; (2) the NTP should be considered to be fully worn on the person of the user since it is attached by means of electrodes and can be transported between the patient's legs while attached to the patient.

Revenue and Taxation Code section 6369(b)(2) provides that the term medicines does not include articles which are in the nature of "splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof." Section 6369(c) provides that notwithstanding subdivision (b)(2), the following are included in the term medicines:

- (1) Permanently implanted pacemakers (Rev. & Tax. Code § 6369(c)(2));
- (2) 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 (Rev. & Tax. Code § 6369(c)(4)).

We have consistently determined that in order for a product to be considered an exempt prosthetic device under Revenue and Taxation Code section 6369(c)(4), the device itself must be fully worn on the person of the user. If any part of the device is not worn on the person it will not qualify as an exempt prosthetic device. The hearing officer concluded that the NTP and the electrodes should be considered one integral unit and that because the electrodes were worn on the person of the user the entire unit should be considered to be worn. If every item which is attached by means of Borne type of electrode or other lead is considered to be “worn on” the person of the user then virtually every medical device, contrivance or appliance would be considered: an' exempt prescription medicine. This is clearly not the intent of the statute.

The hearing officer incorrectly concluded that the NTP was designed to be worn on the person of the user. As the descriptive literature regarding this product explains, it was designed to be portable so it could remain with the patient, however, it was not designed to be worn on the patient. As such, this product does not qualify as an exempt prescription medicine under Revenue and Taxation Code section 6369.

MCA:wak
1713C