

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-93 (39)S
Sales Tax
June 21, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930318A

On March 18, 1993 a Petition for Advisory Opinion was received from Russell J. Shapiro, 222 Main St., Saugerties, New York 12477.

The issue raised by Petitioner, Russell J. Shapiro, is whether a power lift recliner is considered to be exempt medical equipment under Section 1115(a)(3) of the Tax Law.

Petitioner operates a retail furniture store which sells Stylecraft and LA-Z-BOY power lift recliners. A power lift recliner is designed to facilitate a handicapped person to get into a chair and by using the motorized hand held control, tower the person to a regular chair seat position with the benefit of raising their legs for circulation and also recline the body to relax and sleep so they are not always confined to a bed.

The brochure for the Stylecraft recliner includes the following statement:

Introducing the recliner that brings you to your feet or takes you to your favorite reclining position at the touch of your fingertips. It can serve as a medical necessity or a sensible luxury for people who want to maintain their independence.

The Stylecraft Power Lift/Recliner is designed for comfortable long-term sitting, short-term napping or whatever reclining position comforts you. The classic style and choice of fabrics and colors lets it fit into any decor. Most importantly, it satisfies a sense of thrift.

In addition, the brochure states that the chair may qualify as medical necessity for Medicare or insurance purposes.

Section 528.4(e) of the Sales and Use Tax Regulations defines medical equipment in part as follows:

(e) Medical equipment. (1) Medical equipment means machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eye glasses and artificial devices which qualify for exemption under section 1115(a)(4) of the Tax Law), which are intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases or the correction or alleviation of physical incapacity in human beings.

(2) To qualify such equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury or physical incapacity.

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Example 1: Items such as hospital beds, wheel chairs, hemodialysis equipment, iron lungs, respirators, oxygen tents, crutches, back and neck braces, trusses, trapeze bars, walkers, inhalators, nebulizers and traction equipment are exempt medical equipment.

Example 2: A medical patient purchases an air conditioner to be used to lower air temperature to alleviate his illness. Since an air conditioner is non-medical in nature, it is not exempt from the tax.

In Craftmatic Comfort Manufacturing Corp v. New York State Tax Commission, 69 NY2d 141, the Court of Appeals, for the reasons stated in the dissenting memorandum by Justice Paul J. Yesawich, Jr. at the Appellate Division (118 AD2d 995, 997-998), reversed the Appellate Division and held that electrically adjustable beds were not exempt from sales tax. Justice Yesawich noted in his dissent "[T]hat these beds can be utilized to fulfill a useful medical purpose, as attested to by various agencies, does not, however, detract from the fact that they obviously are also suitable for and are indeed used by the general public." He further stated that "[R]espondent's regulation mandating that the equipment not be generally useful for nonmedical purposes (20 NYCRR 528.4[e][2]) not only gives practical construction to the legislation, but forecloses overextension of the exemption".

The power lift recliners in the instant case are substantially similar to the electrically adjusted beds which were the subject of the Craftmatic decision by the Court of Appeals. Accordingly the power lift recliners sold by Petitioner do not qualify for the exemption from sales tax provided by Section 1115(a)(4) of the Tax Law and Section 528.4(e) of the Sales and Use Tax Regulations.

DATED: June 21, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.