

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204



L. JOYCE HAMPERS
COMMISSIONER

August 13, 1981

("Company") intends to lease ("Electrical Muscle Stimulator") and ("Neurostimulator") in Massachusetts to lessees who will re-lease the items to consumers. You inquire whether the Massachusetts sales tax will apply to such leases and re-leases.

The Electrical Muscle Stimulator is a battery-operated device for exercising muscle groups by applying electrical impulses to muscles through electrodes placed on the skin. It weighs 6.4 ounces and measures 5 by 2.4 by .9 inches.

The Neurostimulator is a battery-operated device for controlling pain by applying electrical impulses to nerves through electrodes placed on the skin. It weighs 3.0 ounces and measures 2.5 by 2.4 by .76 inches.

Treatment by means of the Electrical Muscle Stimulator and the Neurostimulator varies among patients only in the placement of electrodes, the setting of controls, and the choice of high- or low-power output jacks; neither device requires modification to suit the needs of particular patients.

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Both devices are equipped with clips that allow patients to attach the devices to their belts during treatment.

The Electrical Muscle Stimulator may only be sold by or on the order of a licensed health care professional; the Neurostimulator may only be sold by or on the order of a physician.

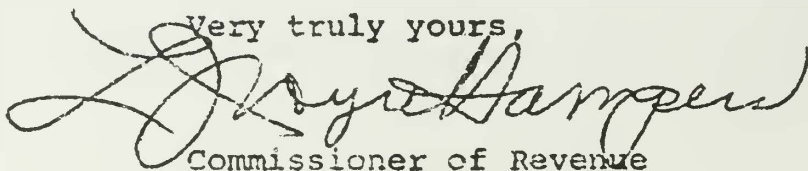
Massachusetts General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property in Massachusetts. "Sale" includes leases and rentals (G.L. c. 64H, s. 1(12)(a)), but "sale at retail" does not include sales for resale in the regular course of business (G.L. c. 64H, s. 1(13)).

General Laws Chapter 64H, Section 6(1) provides that the sales tax does not apply to

"[S]ales of medicine...on prescriptions of registered physicians...; sales of artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual; [and] sales of artificial limbs, artificial eyes, hearing aids and other equipment worn as a correction or substitute for any functioning portion of the body."

Based on the foregoing, it is ruled that the sales tax applies to sales at retail in Massachusetts of the Electrical Muscle Stimulator and the Neurostimulator. When the Company leases such devices to a customer who is a registered Massachusetts vendor purchasing for re-lease in the regular course of business, the Company may accept a Massachusetts resale certificate (Form ST-4) from the customer in lieu of collecting the tax; the customer's re-leases will be subject to tax.

Very truly yours,



Royce Dampier

Commissioner of Revenue

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