| 2 | [Cite as Maxxim Med., Inc. v. Tracy (1996), Ohio St.3d] |
|----|---|
| 3 | Taxation Sales tax Transcutaneous electrical nerve stimulators |
| 4 | and neuromuscular electrical stimulators Motion to remand |
| 5 | to Board of Tax Appeals granted Board to rule on whether |
| 6 | the equipment supplements impaired functions of the human |
| 7 | body or aids human perambulation. |
| 8 | (No. 95-2447 Submitted May 2, 1996 Decided July 24, 1996.) |
| 9 | A <u>ppeal</u> from the Board of Tax Appeals, No. 94-X-224. |
| 10 | On Motion for Remand. |
| 11 | Maxxim Medical, Inc., appellant, sells or leases transcutaneous |
| 12 | electrical nerve stimulators ("TENS") and neuromuscular electrical |
| 13 | stimulators ("NMES"). The Tax Commissioner, appellee, assessed sales tax |
| 14 | against these transactions. |
| 15 | Maxxim claims exemption for these transactions under R.C. |
| 16 | 5739.02(B)(19) because the disputed equipment, so it contends, (1) supports |
| 17 | weakened or non-functioning parts of the human body, (2) supplements |
| 18 | impaired functions of the human body, or (3) aids in human perambulation. |
| 19 | It also claims that R.C. 4121.44(P) relieves it from collecting the tax on |

Maxxim Medical, Inc., Appellant, v. Tracy, Tax Commr., Appellee.

1

- 1 transactions in which the Ohio Bureau of Workers' Compensation pays for
- 2 the equipment for the customers.

| 3 | The BTA, on appeal, affirmed the commissioner's order assessing the |
|----|--|
| 4 | disputed equipment. The BTA found, following its decision in Kempf |
| 5 | Surgical Appliances, Inc. v. Tracy (Feb. 3, 1995), BTA No. 93-D-486, |
| 6 | unreported, affirmed in part, reversed in part and cause remanded in Kempf |
| 7 | Surgical Appliances, Inc. v. Tracy (1996), 74 Ohio St.3d 517, 660 N.E. 2d |
| 8 | 444, that the items did not support any part of the human body and did not |
| 9 | act as braces. The BTA did not rule on whether this equipment aided |
| 10 | human perambulation or supplemented an impaired function of the human |
| 11 | body. The BTA also determined that Maxxim should have collected tax on |
| 12 | purchases paid for by the Bureau of Workers' Compensation. |
| 13 | The cause is now before this court upon an appeal as of right. |
| 14 | Buckingham, Doolittle & Burroughs, Steven A. Dimengo and David |
| 15 | L. Drechshler, for appellant. |
| 16 | Betty D. Montgomery, Attorney General, Richard C. Farrin and |
| 17 | Steven L. Zisser, Assistant Attorneys General, for appellee. |

2

| 1 | Per Curiam. Under Kempf Surgical Appliances, Inc. v. Tracy, we |
|----|---|
| 2 | grant Maxxim's motion to remand this matter to the BTA for it to rule on |
| 3 | whether the equipment supplements impaired functions of the human body |
| 4 | or aids human perambulation. We note that Maxxim had conceded that this |
| 5 | equipment does not support weakened or non-functioning parts of the |
| 6 | human body. |
| 7 | Furthermore, we reserve judgment on whether R.C. 4121.44(P) |
| 8 | relieves Maxxim from collecting the sales tax when the Bureau of Workers' |
| 9 | Compensation pays for the equipment for Maxxim's customers. |
| 10 | Judgment accordingly. |
| 11 | Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and |
| 12 | STRATTON, JJ., concur. |
| | |