

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

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 Appeal 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

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.

