

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition

of

HERMAN L. GORDON

DETERMINATION

for Revision of a Determination or for Refund  
of Sales and Use Taxes under Articles 28 and 29 :  
of the Tax Law for the Year 1986.

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Petitioner, Herman L. Gordon, 1688 St. Marks Avenue, Yerrick, New York 11566, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the year 1986 (File No. 70829) .

On July 21, 1987, petitioner waived a hearing in the Division of Appeals and agreed to submit the case for determination based on the Division of Taxation file. After due consideration of the record, Daniel J. Ranalli, Administrative Law Judge, hereby renders the following determination.

ISSUE

Whether an ergometer exercise bicycle is exempt from sales tax under section 1115(a)(3) of the Tax Law thereby entitling petitioner to a refund.

FINDINGS OF FACT

1. On February 3, 1986, petitioner, Herman L. Gordon, filed an Application for Credit or Refund of State and Local Sales or Use Tax for sales tax of \$32.00 paid on the purchase of an ergometer exercise bicycle. The basis for the refund claim was that the bicycle was prescribed by a physician following petitioner's heart operation.

2. The Audit Division denied the refund claim by letter dated May 28, 1986 on the grounds that the bicycle did not qualify for the exemption under section 1115(a)(3) of the Tax Law for medical equipment.

3. On January 5, 1982, petitioner had open heart surgery consisting of a triple coronary artery bypass. On January 8, 1986, Stephan G. Cokinos, M.D. prescribed an ergometer bicycle for petitioner as part of his cardiac rehabilitation. Dr. Cokinos, in a letter dated January 8, 1986, indicated that the ergometer had special controls whereby the patient can maintain a fixed workload as prescribed by a cardiologist.

4. On January 31, 1986, petitioner purchased the Monark Home Ergometer for \$399.99 plus sales tax of \$32.00, for a total of \$431.99.

5. Petitioner used the bicycle to exercise at home in lieu of a supervised monitored exercise program in which he was previously enrolled.

6. The Travelers Insurance Company reimbursed petitioner for a portion of the purchase price of the bicycle. The balance of petitioner's claim, excluding the sales tax, was paid by his wife's insurance company.

#### CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes sales tax on the retail sale of tangible personal property. Section 1115(a)(3) of the Tax Law provides an exemption from the sales tax for medical equipment used to correct or alleviate physical incapacity.

B. That 20 NYCRR 528.4(e) provides that:

"(1) Medical equipment means machinery, apparatus and other devices...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."

C. That an ergometer exercise bicycle is nonmedical in nature and not primarily and customarily used for medical purposes. Accordingly, the bicycle does not qualify for the exemption afforded under section 1115(a)(3) of the Tax Law (~~see Matter of Craftmatic Comfort Manufacturing Corp. v. State Tax Commission~~, 69 NY2d 755).

D. That the petition of Herman L. Gordon **is** denied and the refund denial issued May 28, 1986 is sustained.

DATED: Albany, New York

SEP 17 1987

  
ADMINISTRATIVE LAW JUDGE