

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Craftmatic Comfort Manufacturing Corp. :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the :  
Period 3/1/78 - 2/28/81. :  
:

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AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of March, 1985, he served the within notice of Decision by certified mail upon Craftmatic Comfort Manufacturing Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Craftmatic Comfort Manufacturing Corp.  
1726 Winchester Rd.  
Bensalem, PA 19020

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
14th day of March, 1985.

David Parchuck

James A. Haggard

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of March, 1985, he served the within notice of Decision by certified mail upon Harvey Shapiro, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harvey Shapiro  
Mesirov, Gelman, Jaffe, Cramer & Jamieson  
The Fidelity Bldg., 123 S. Broad St.  
Philadelphia, PA 19109

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
14th day of March, 1985.

David Parchuck

James A. McGovern  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

March 14, 1985

Craftmatic Comfort Manufacturing Corp.  
1726 Winchester Rd.  
Bensalem, PA 19020

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Harvey Shapiro  
Mesirov, Gelman, Jaffe, Cramer & Jamieson  
The Fidelity Bldg., 123 S. Broad St.  
Philadelphia, PA 19109  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CRAFTMATIC COMFORT MANUFACTURING CORP.	:	DECISION
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1978	:	
through February 28, 1981.	:	

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Petitioner, Craftmatic Comfort Manufacturing Corp., 1726 Winchester Road, Bensalem, Pennsylvania 19020, 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 period March 1, 1978 through February 28, 1981 (File No. 36993).

On August 15, 1984, petitioner filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of the entire file and a stipulation of facts which was submitted on September 28, 1984. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether sales of adjustable beds by petitioner were exempt from sales and use tax as medical equipment within the meaning and intent of section 1115(a)(3) of the Tax Law.

FINDINGS OF FACT

1. On February 19, 1982, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Craftmatic Comfort Manufacturing Corp., in

the amount of \$103,905.52, plus interest of \$21,593.73, for a total due of \$125,499.25 for the period March 1, 1978 through February 28, 1981.

2. Petitioner had executed consents extending the period of limitation for assessment of sales and use taxes due for the period March 1, 1978 through February 28, 1979 to June 20, 1982.

3. Petitioner is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Bensalem, Pennsylvania. Petitioner is a wholesaler and retailer of electrically adjustable beds which it purchases from Goodman Manufacturing, Inc. The Craftmatic bed can be adapted to a number of positions and has, among other features, an electric control console.

4. Petitioner has two markets for its beds. They are sold to the general public as "comfort" beds. Petitioner also sells them, pursuant to doctor's prescriptions, to individuals for whom the beds are an integral part of their medical therapy. In the latter cases, the beds can be specially equipped with side rails, trapeze bars, sockets for intravenous rods and similar medical equipment to accommodate an individual patient's needs. During the period in issue, petitioner did not collect sales tax on any of its sales to New York residents made pursuant to a doctor's prescription. Approximately 25 percent of the beds sold during the audit period were sold medically equipped pursuant to a physician's prescription.

5. On audit, the Audit Division utilized a test period, agreed to by petitioner, to determine additional tax due. The auditor determined additional tax due in the amount of \$103,905.52 broken down as follows:

Disallowed exempt sales of medical equipment	\$79,272.74
Improper jurisdictional reporting	\$11,196.72
Disallowance of refunds of sales	

tax to customers	\$ 6,718.03
Tax collected and not remitted	\$ 6,718.03

The \$79,272.74 tax due on disallowed sales of medical equipment involved sales of petitioner's adjustable beds. Petitioner has not raised any arguments with respect to the other portions of the assessment.

6. In writing their prescriptions, physicians refer to Craftmatic beds as "hospital beds". The Workmen's Compensation Board of New York has approved the expenditure of funds for the purchase of Craftmatic beds pursuant to physicians' prescriptions as "necessary and related" to the treatment of a covered medical condition. Medicare has approved the expenditure of funds for the purchase of Craftmatic beds as "medically necessary" equipment. Various insurance companies have likewise approved the expenditure of funds for the purchase of Craftmatic beds when prescribed by physicians.

7. On April 5, 1984, the New York State Health and Hospitals Corporation invited petitioner to submit a proposal for 50 of its adjustable beds with accessories to be used as hospital beds. Petitioner applied to the Food and Drug Administration ("FDA") for approval of the Craftmatic Adjustable Bed as an FDA approved "medical device". The FDA approved the adjustable bed as a "medical device". Moreover, the FDA also determined that petitioner was a "registered medical device establishment". Pursuant to its approval of the bed as a medical device, the FDA authorized petitioner to make the following statements in its promotional material to the general public:

"The Craftmatic Electric Adjustable Bed with optional heat massage may be helpful in the;

1. Relief of lower back pain.
2. Relief of every day aches and pains.
3. Treatment of hiatal hernia.

4. Increase in blood circulation of the legs.
5. Reduction of edema or swelling of the leg.

CONSULT YOUR PHYSICIAN BEFORE PURCHASING A CRAFTMATIC  
ADJUSTABLE BED FOR ANY OF THESE PURPOSES."

CONCLUSIONS OF LAW

A. That section 1115(a)(3) of the Tax Law exempts the following from sales and use tax:

"Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity,...".

B. That 20 NYCRR 528.4(e) provides in part:

"(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."

C. That, although 25 percent of petitioner's sales of adjustable beds are for medical purposes, in 75 percent of the sales the beds are sold for nonmedical purposes, specifically, as a bed designed to be more comfortable than a standard bed. Inasmuch as the beds are not "primarily" used for medical purposes and are generally useful in the absence of illness, injury or physical incapacity, they do not qualify as medical equipment within the meaning and intent of section 1115(a)(3) of the Tax Law and 20 NYCRR 528.4(e) and are thus not exempt from sales and use tax.

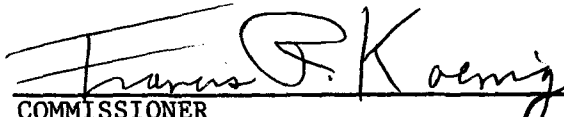
D. That the petition of Craftmatic Comfort Manufacturing Corp. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 19, 1982 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 14 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



P 693 169 651

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

Sent to	<i>Harvey Shapiro</i>
Street and No.	<i>Mosier Court Jaffe Camarillo</i>
P.O., State and ZIP Code	<i>The Palmdale Bldg</i>
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

P 693 169 650

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

Sent to	<i>Chertmote Comfort Ind. Co.</i>
Street and No.	<i>1726 Wm. Rector St</i>
P.O., State and ZIP Code	<i>Bensalem Pa 19020</i>
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	