

M e m o r a n d u m**425.0907.500**

To: Mr. Robert Roos
X----- District Auditing

Date: May 29, 1997

From: John L. Waid
Senior Tax Counsel

Subject: X-----

I am responding to your memorandum dated April 16, 1997 to the Legal Division regarding the tax status of sales of a Vacuum Erection Device (VED) by X----- Company. You attached to your memorandum several flyers describing the device and how it works. Used to treat impotence, the VED, according to one of the flyers, consists of a Softouch™ Constriction Seal and a vacuum pump. The user places the Softouch™ on his penis, puts the pump sleeve over his penis, and operates the vacuum pump to create an erection. The Softouch™ remains on the body to maintain the erection and may be left there for up to thirty minutes.

Under Regulation 1591(b) (5), a device must be fully worn on the body to qualify as a prosthetic device. (Annot. 425.0168.300 10/4/84; 7/10/96.) The only part of the VED that is worn on the body is the Softouch™. We thus conclude that the VED is an appliance excluded from the definition of "medicine" under Regulation 1591(c) (2). Its sales are subject to tax

JLW:sr