

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of

██████████

Petitioner.

DOCKET NO. 0-312-927-232

DECISION

██████████ (Petitioner) protested the Notice of Taxpayer Initiated Refund Determination (Notice) dated June 27, 2024, issued by the Sales and Use Tax Bureau (Bureau) of the Idaho State Tax Commission (Tax Commission). Petitioner disagrees with the Bureau's denial of its claim for refund of sales tax paid. The Tax Commission, having reviewed the file, hereby upholds the Notice for the reasons stated below.

BACKGROUND

Petitioner is a mobile med spa located in Meridian, Idaho. They purchased and paid sales tax for an ██████████ (Device). Petitioner later determined the Device may qualify for a sales tax exemption as durable medical equipment.

On March 22, 2024, Petitioner filed a request for refund of the sales tax paid on the Device. The Bureau reviewed the request, determined the Device did not qualify as durable medical equipment and issued the Notice denying the refund. Petitioner protested the Notice and requested an additional review of the matter.

The Bureau acknowledged Petitioner's protest and forwarded the case to the Tax Commission's Appeals Unit (Appeals) for administrative review.

¹ ██████████ is a non-invasive treatment that eliminates stubborn fat and builds muscle using RF heating and HIFEM technology.

Appeals reviewed the case and sent Petitioner a letter informing them of the options available for redetermining the Notice. An informal hearing was held October 8, 2024, where Petitioner was represented by [REDACTED]

During the hearing, Petitioner argued the Device is a muscle stimulator and is exempt from sales tax because it meets the definition of durable medical equipment and [REDACTED] as a practitioner, is administering the Device. The Tax Commission, having reviewed the matter, hereby issues its decision on the information available.

LAW AND ANALYSIS

The issue in this case is whether Petitioner is due a refund of the Sales tax paid on the purchase of the Device. Idaho Code 63-3622N. Prescriptions (a) states in part:

(a) There are exempted from the taxes imposed by this chapter the following when administered or distributed by a practitioner or when purchased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner...

(7) Other durable medical equipment and devices and related parts and supplies specifically designed for those products which shall include, but are not limited to: oxygen equipment, oxygen cylinders, cylinder transport devices (sheaths, carts), cylinder stands, support devices, regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxygen base dispenser, liquid oxygen portable dispenser, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, oxygen fittings and accessories, respiratory therapy equipment, room humidifiers, aspirators, aerosol compressors (stationary and portable), ultrasonic nebulizers, volume ventilators, respirators and related device supplies, percussors, vibrators, IPPB, circuits, devices and supplies, air oxygen mixers, manual resuscitators, nebulizers, tubing, emergency oxygen delivery units, patient care equipment, physical and occupational therapy items, hospital beds, trapeze bars and bar stand, bed rails, geriatric chairs, lift recliners, bedside commodes, overbed tables, patient lifts, patient lift slings, traction stands and pulleys, shower seating, shower grip bars, raised toilet seats, toilet safety frames, walking canes, quad canes and accessories, walkers, wheeled walkers, walker accessories, I.V. stands, crawlers, posture back supports for seating, posture back supports, wheelchairs, crutches, crutch pads, tips, grips, restraints, standing frame devices and accessories, hand exercise equipment and putty, specially designed hand utensils, leg weights, paraffin baths, hydrocollators, hydrotherm heating pads, communication aids for physically impaired, specialized seating, desks, work stations, foam wedges,

writing and speech aids for the impaired, dressing aids, button loops and zipper aids, grooming aids, dental aids, eating and drinking aids, splints, holders, household aids for the impaired, shampoo trays, reaching aids, foam seating pads, decubitus seating pads, bed pads, fitted stroller, alternating pressure pads and pumps, stethoscope, sphygmomanometers, otoscopes, sitting and sleeping cushions, patient transport devices, boards, stair glides, lifts in home, transcutaneous nerve stimulators, **muscle stimulators** and bone fracture therapy devices.

(b) The term "practitioner" means a physician, physician assistant, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, hearing aid dealer or fitter or any person licensed by the state under Title 54 Idaho Code, to prescribe, administer or distribute items identified in subsection (a) of this section....

(d) The term "durable medical equipment" means equipment which:

- (1) Can withstand repeated use;
- (2) Is primarily and customarily used to serve a medical purpose;
- (3) Generally is not useful to a person in the absence of illness or injury; and
- (4) Is appropriate for use in the home.

Practitioners can purchase durable medical equipment tax exempt if they purchase the items on behalf of an individual for use by the individual under a prescription or work order. Idaho State Tax Commission Administrative Rule 100 states in part:

...c. Example: A physician issues a prescription for a wheelchair to a nursing home patient. The nursing home delivers the prescription to a wheelchair retailer and purchases the wheelchair on behalf of the patient. No tax applies. (3-31-22)

d. Example: A nursing home purchases wheelchairs for general use in its facility. Since the wheelchairs are not purchased under prescription for a specific patient, sales tax applies...

The Dermatology Institute of Southern California describes what an [REDACTED] [REDACTED] is, what it does, and how it is used.

[REDACTED] [REDACTED] is a procedure that burns fat and tones the body to give it a contoured silhouette. The treatment does not involve surgery so there's no need for anyone to worry about incisions, scarring or prolonged recovery periods. Those who want to enjoy the perks of having a toned and chiseled body or a svelte and toned physique can do so at their leisure with [REDACTED] [REDACTED] The procedure is painless, and the results are stunning.

■■■■ does what many traditional cosmetic and body sculpting procedures can't. It utilizes high intensity focused electromagnetic (HIFEM) and radiofrequency energy to heat fat cells and increase muscle fibers. This frenzy, known as supramaximal contractions, cause the muscles to contract at such an intense rate that they don't have time to relax or cool down. The procedure also uses radio frequency energy to burn up to 30% body fat. There's no recovery phase during treatment, the supramaximal contractions and heat from the RF energy encourages the body to respond by burning fat and increasing muscle production. This is a process that isn't easily mimicked by exercise or any type of physical activity or surgical procedure...

To qualify as durable medical equipment, it also needs to be appropriate for use in the home. The Device is not. It's extremely expensive and it is large. The Device is not readily available on the consumer market for purchase by patients. There is restricted access because of the need for education, training, and experience to operate the machine correctly. Although the concept of being able to use the Device at home might seem appealing, the limitations and safety concerns outweigh the possible benefits.

Is the Device useful to somebody who is injured or has an illness? Yes, it is, but the Device is typically used for cosmetic procedures. Insurance does not cover the procedure using the Device.

In this case, Petitioner purchased the Device for ■■■■ to provide services to her patients. It was not purchased under a prescription or work order for a specific patient, and the Device does not fit into three of the four characteristics of durable medical equipment.

CONCLUSION

Petitioner has not provided the Tax Commission with information to establish that they qualify for a refund of sales tax paid on the purchase of the Device. There is no sales tax exemption for buying equipment as a practitioner in Idaho unless you are a nonprofit hospital, or the purchase is under a prescription or work order for an individual.

The Tax Commission considered all the information provided and finds that the Device was purchased in Idaho and sales tax was paid correctly. Therefore, the Tax Commission upholds the Notice.

THEREFORE, the Notice of Taxpayer Initiated Refund Determination dated June 27, 2024 is AFFIRMED and MADE FINAL.

<u>REFUND</u> <u>REQUESTED</u>	<u>REFUND</u> <u>DENIED</u>	<u>TOTAL</u> <u>DUE</u>
\$10,043.40	\$10,043.40	\$0

An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2025.

IDAHO STATE TAX COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2025,
a copy of the within and foregoing DECISION was served by sending the same by United States
mail, postage prepaid, in an envelope addressed to:



Receipt No.
