UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

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CONSUMER PRODUCT SAFETY COMMISSION

TO : Tom McKay, OCR

DATE: NOV 07 1975

THRU : Margaret Freeston, Asst. General Counsel MAF

FROM : Jeanette Michael, OGC JM

SUBJECT: Jurisdiction over the Taser Public Defender

The Consumer Product Safety Act gives the Consumer Product Safety Commission jurisdiction over all consumer products. The term "consumer product" excludes "...any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954...or any component of any such article..." (15 U.S.C. 2052 (a)(1)(E)). Section 4181 includes pistols, revolvers, firearms, shells and cartridges. (Emphasis added)

The question is whether the "Taser" is a firearm within the meaning of section 4181 of the Internal Revenue Code (26 U.S.C. 4181). The term firearm has been defined in 18 U.S.C. 921 (Gun Control Act of 1968), 15 U.S.C. 901 and 26 U.S.C. 5848. It is not clear which definition is applicable, however 18 U.S.C. 921 is the most comprehensive.

> (3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm. (Emphasis added)
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> (4) The term "destructive device" means-
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> (A) any explosive, incendiary, or poison gas -
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> (i) bomb,
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> (ii) grenade,
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> (iii) rocket having a propellant charge of more than four ounces,

226

(iv) missile having an explosive or incendiary charge more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

In response to an inquiry from Mr. J.E. Rogers of Rogers, Mirabelle' & Berlanti dated 10-12-73 concerning the classification of the "Taser" under the provisions of the Gun Control Act of 1968, Mr. A. Atley Peterson, Assistant Director, Technical and Scientific Services, Bureau of Alcohol, Firearms and Tobacco, Department of the Treasury concluded the following:

> The "Taser" is <u>not</u> a firearm as defined in 18 U.S.C. 921. Rationale- Although the "Taser" wires are expelled by the explosion or expansion of gases generated by the ignition of 4/5 of a grain of smokeless powder, the wires and appropriate wire contacts do not meet the definition of a projectile. The determination is based on the fact that the muzzle velocity is well below the standards established by

> the Office of the Surgeon General, Department of Army. Research studies conducted by that office indicate that an impact velocity of from 125 to 170 feet per second, contingent on the composition and shape of the projectile, is necessary to cause a break in the skin in an unclothed area. These findings reinforce the finding of ATF that the net or barbs are not projectiles since they deploy over a strictly limited area and are still attached to the basic component by means of the wires which convey the electric charge.

This office agrees with the findings of the Alcohol, Tobacco and Firearms Division of the Department of the Treasury and concludes that the "Taser" does not fall within the purview of section 4181 of the Internal Revenue Code of 1954 (26 U.S.C. 4181). Since the "Taser" is not specifically excluded under the Consumer Product Safety Act, the Commission can exercise jurisdiction over the product under that Act.

While the views expressed in this opinion are based on the most current interpretation of the law by this office, they could subsequently be changed or superseded.