6(b) CLEARED: 3/15/84 RL
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Comments Processed
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UNITED STATES GOVERNMENT

# Memorandum

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

TO : Commission
THRU : Sadye E. Dunn, Secretary
THRU : Michael A. Brown, General Counsel
FROM : Jeanette Michael, OGC

DATE: MAR 22 1976

#236

SUBJECT: Jurisdiction over the Taser Public Defender

The term "consumer product" excludes "...any article which if sold by manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954..." (15 U.S.C. 2052 (a)(1)(E)). Section 4181 of the Internal Revenue Code (IRC) includes pistols, revolvers, firearms, shells and cartridges. (Emphasis added) Thus firearms are subject to the tax under section 4181 of the IRC and excluded from the term "consumer product".

The question is whether the Taser is a firearm within the meaning of section 4181 of the IRC of 1954.

It is the policy of the Internal Revenue Service to defer to Alcohol, Tobacco and Firearms' definition of firearm. This is evident in the definition of "firearm" under section 4181 of the IRC (26 CFR 48.4181-2) and the Gun Control Act of 1968 (18 U.S.C. 921). For purposes of the tax imposed by section 4181 the term "firearms" means "any portable weapons, such as rifles, carbines, machine guns, shotguns or fowling pieces, from which a shot, bullet or other projecticle may be discharged by an explosive". (Emphasis added) The term "firearm" under the Gun Control Act means "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..." (Emphasis added)

In a public release dated March 18, 1976, the Bureau of Alcohol, Tobacco and Firearms (ATF) of the Department of the Treasury announced that the device known as Taser is a firearm as defined in Title I and Title II of the Gun Control Act of 1968. Since the Taser is a firearm and, as such, falls within the purview of section 4181 of the IRC of 1954, it is specifically excluded under the Consumer Product Safety Act's definition of consumer product and the Commission cannot exercise jurisdiction over the product.

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Government agencies, as do the courts, usually give great weight to the views and interpretations of the laws that the agency administers. (Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972)). Thus, the Office of the General Counsel suggests that the Commission defer to ATF's present findings and conclude that the Taser is a firearm.

This advisory opinion negates advisory opinion #226.

UNITED STATES GOVERNMENT

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

TO : Commission

DATE: MAR 22 1976

THRU : Sadye E. Dunn, Secretary

THRU : Michael A. Brown, General Counsel

FROM : Jeanette Michael, OGC

SUBJECT: Reconsideration of the Commission's jurisdiction over a device known as the Taser Public Defender

On November 7, 1975 the Office of the General Counsel issued an advisory opinion (#226) (see attached) which stated that the Taser was a "consumer product" within the meaning of the Consumer Product Safety Act (15 U.S.C. 2052 (a)(1)), thus subject to the Commission's jurisdiction. Attached for your information is a copy of a revised advisory opinion concerning the Commission's authority to regulate the Taser. This revision is prompted by the recent decision of the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

Attachments

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OFFICE OF THE SECRETARY
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