

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(38)S
Sales Tax
July 25, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020109A

On January 9, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Medline Industries, Inc., One Medline Place, Mundelein, IL 60060.

The issue raised by Petitioner, Medline Industries, Inc. is whether its Security Vest and the Tie-Back Vest, as described below, are exempt from sales and compensating use tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a distributor of medical equipment and supplies, mainly to hospitals, medical centers and nursing homes. Petitioner asks whether its Security Vest and Tie-Back Vest are “clothing to be worn by human beings,” which having a cost of under \$110 per item, would be exempt from the 4% New York State sales and compensating use tax under Section 1115(a)(30) of the Tax Law.

These items are in the “Patient Safety Devices” section of Petitioner’s catalog. The Security Vest is described as follows: “Easy to put on and remove. Vest criss-crosses in front. Waist belt ties out of reach. Shoulder loops may be used with extra straps provided to help prevent patient from sliding down or sitting up in bed.”

The Tie-Back Vest is described as follows: “Vest ties in back, making it difficult for patient to remove. Shoulder loops can be used to help prevent sitting up or sliding down in bed. Available in polyester mesh. Corset buckles used to secure straps to bed frame or wheelchair lock spurs.”

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(15) Clothing and footwear. (i) Clothing and footwear to be worn by human beings, but not including costumes or rented formal wear, and (ii) fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which are used or consumed to make or repair such clothing (other than such costumes or rented formal wear) and

which become a physical component part of such clothing, but not including such items made from pearls, precious or semi-precious stones, jewels or metals, or imitations thereof.

Section 1115 of the Tax Law provides, in part:

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(3) 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, and products consumed by humans for the preservation of health but not including . . . medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

* * *

(30) Clothing and footwear for which the receipt or consideration given or contracted to be given is less than one hundred ten dollars per article of clothing, per pair of shoes or other articles of footwear or per item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing.

Section 528.4 of the Sales and Use Tax Regulations provides, in part:

* * *

(e) *Medical equipment.* (1) Medical equipment means machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eyeglasses 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.

* * *

(4) Medical equipment is not exempt if purchased by a person performing medical or similar services for compensation. . . .

* * *

(g) *Supplies.* (1) Supplies used in the cure, mitigation, treatment or prevention of illnesses or diseases or for the correction and alleviation of physical incapacity are exempt.

* * *

(2) Medical supplies are not exempt if purchased by a person performing medical or similar services for compensation. . . .

(h) *Taxable medical equipment and supplies.* (1) Medical equipment and supplies purchased for use in performing medical or similar services for compensation are not exempt from tax.

Technical Services Division Memorandum entitled Sales and Use Tax Exemption on Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing, February 12, 2001, TSB-M-01(02)S provides an explanation of the amendment to the Tax Law with respect to the imposition of sales tax on clothing, footwear and other items used or consumed to make or repair such clothing.

TSB-M-01(02)S provides, in part:

Beginning March 1, 2000, clothing and footwear costing less than \$110 per item is exempt from the 4% New York State sales and compensating use taxes. This exemption does not apply to any locally imposed sales and use taxes unless the county or city imposing those taxes elects to provide for it. . . .

The exemption applies only to clothing and footwear worn by humans. It also applies to most fabric, thread, yarn, buttons, snaps, hooks, zippers, and like items which become a physical component part of exempt clothing, or that are used to make or repair exempt clothing. . . .

While the exemption applies to items of clothing and footwear worn on the body, not all items worn on the body are clothing and footwear. . . Equipment items, such as tool belts, hard hats, and sport, bicycle, and motorcycle helmets, though worn on the body, remain taxable. Protective goggles and safety glasses (unless prescription) for sport or occupational use, protective sport or occupational masks

or pads . . . fireplace mittens, and similar pieces of equipment (sporting or otherwise) also remain taxable. . . .

Opinion

Petitioner is a distributor of medical equipment and supplies, mainly to hospitals, medical centers and nursing homes. Petitioner has described the products in question, the Security Vest and Tie Back Vest, as items which are worn by patients to limit their movement while sitting or lying in a chair or bed.

Section 1115(a)(30) of the Tax Law provides an exemption from sales and use tax for clothing and footwear worn by humans which costs less than \$110 per article of clothing. However, TSB-M-01(02)S, supra, provides that not all items worn on the body are clothing or footwear. It is necessary to consider the purpose for which the Security Vest and Tie Back Vest are used to establish if these items qualify as clothing or footwear. The primary purpose of these items is to provide a safety restraint for patients in a sitting or lying position as evidenced by the product descriptions in Petitioner's catalog. Consequently these items would only be purchased for use by a patient in need of a safety restraint. Although these items are worn by patients requiring such restraint, the fact that these items include characteristics which might resemble clothing does not classify them as such. These items are not designed to be worn as clothing, rather they are intended to serve as a more comfortable restraint for patients. These items function only as a restraint, similar to a seat belt, and are not useful as clothing. The patient would need the same appropriate covering or clothing to protect against indoor or outdoor temperature or weather conditions whether or not the patient was using these restraints. The Security Vest and Tie Back Vest are not clothing, therefore, and do not qualify for the exemption provided for in Section 1115(a)(30) of the Tax Law.

Section 1115(a)(3) of the Tax Law exempts medical equipment from sales and use tax, except when purchased by a person performing medical or similar services for compensation. Medical equipment means machinery, apparatus and other devices which are intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, and are not generally useful in the absence of illness, injury or physical incapacity.

The Security Vest and Tie Back Vest as described above are used in patient treatment and to alleviate physical incapacity, and are not generally useful in the absence of illness, injury or physical incapacity. Therefore, these items qualify as medical equipment, exempt from tax under Section 1115(a)(3) of the Tax Law when sold to a purchaser who is not performing medical or similar services for compensation. The sale of the Security Vest and Tie Back Vest to a purchaser who is performing medical or similar services for compensation would be subject to sales tax and compensating use tax. However, if the sale is to an organization exempt under Section 1116(a) of

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the Tax Law or to a person who will resell the vests, such as a wholesaler, then no sales or use tax will be due, provided that Petitioner obtains the appropriate exemption document from the purchaser.

DATED: July 25, 2002

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.