

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-07(19)S
Sales Tax
July 26, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S050520A

On May 20, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from Brentwood Pain and Rehabilitation Services, Hempstead Pain and Medical Services, and South Bronx Pain and Medical Services, 468 Suffolk Avenue, Brentwood, NY 11717. Petitioners, Brentwood Pain and Rehabilitation Services, Hempstead Pain and Medical Services, and South Bronx Pain and Medical Services, provided additional information pertaining to the Petition on November 27, 2006.

The issue raised by Petitioners is whether medical practitioners may purchase medical equipment for resale.

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

Petitioners are medical practitioners who provide professional medical services to patients. During the course of treatment, a medical practitioner will provide a patient a medical device such as a neck brace, knee brace, or cervical collar. All of these devices are used to alleviate a medical condition or reduce a patient's discomfort. Quite often, the patient could obtain the same medical device at a retail surgical supply store or a retail drug store. None of the devices requires a prescription; however, prescriptions for the purchase of these items are generally necessary to ensure that medical insurance companies will reimburse patients for purchasing the items.

None of the items in question are used during either the medical practitioner's examination or subsequent treatment of the patient. All items in question are used by the patient outside of the medical practitioners' office to alleviate the medical condition. Approximately 95% of the time, the medical practitioner provides the medical equipment to the patient on the initial visit following the practitioner's evaluation of the patient.

Petitioners provide medical equipment directly to their patients in an effort to make it easier for patients to get the precise medical equipment needed and to create additional revenue for Petitioners. When Petitioners purchase this equipment, the items in question are billed to an account separate from the items used by Petitioners in the course of treatment, such as ultrasound gels, headrest paper, lotions, etc. The patient's insurance company is charged separately for the medical equipment provided to the patient and for the professional medical services provided.

The medical practitioner dispenses the medical equipment to the patient in a shopping bag. If the medical equipment, such as braces or cervical collars, is the wrong size, the patient is allowed to return the equipment to the medical practitioner for a different size device.

Applicable law and regulations

Section 1101(b)(4)(i) of the Tax Law defines *retail sale*, in part, as follows:

A sale of tangible personal property to any person for any purpose, other than (A) for resale as such. . . .

Section 1105(a) of the Tax Law imposes sales tax on “The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.”

Section 1115(a) of the Tax Law provides, in part:

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 cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or 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.

Section 526.6 of the Sales and Use Tax Regulations provides, in part:

(a) The term *retail sale* or *sale at retail* means the sale of tangible personal property to any person for any purpose, except as specifically excluded.

* * *

(c) *Resale exclusion.* (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

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

Exemption. (1) Drugs and medicines intended for the 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 are exempt.

* * *

(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. (See subdivision (g) of this section.)

* * *

(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.

* * *

(3) It is immaterial whether the compensation is paid to the practitioner or institution by the patient or another source.

Opinion

Petitioners are medical practitioners who provide professional medical services to patients. During the course of treatment, the medical practitioner may determine that a patient needs a medical device, such as a neck brace, knee brace, or cervical collar. All of these devices are used to alleviate a medical condition or reduce a patient’s discomfort. Petitioners state that the devices in question are separately stated when charged to the patient’s insurance company and are not used during the medical practitioner’s examination or treatment but are only used by the patient outside the medical practitioner’s office.

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Purchases of medical equipment, *other than for use in the performance of medical service for compensation*, are exempt from sales tax under section 1115(a)(3) of the Tax Law.

As part of their provision of medical services for compensation, Petitioners provide patients with medical devices (neck braces, knee braces, cervical collars, etc.) that Petitioners have determined to be useful or necessary to the patient for the patients' treatment or rehabilitation. Petitioners bill their patients for their services, and the charges for medical devices are included in the bill for services as part of Petitioners' cost of providing medical service. Whether or not the charge is separately shown on the patient's invoice, the charge for such devices is separately billed to the patient's insurance carrier. Regardless of how the devices are billed to the patient or insurer, the facts submitted by Petitioners indicate that the devices provided to Petitioners' patients are purchased by Petitioners for use in performing medical services for compensation and are not provided to patients other than in conjunction with Petitioners' performance of medical services for compensation for such patients.

Whether Petitioners, as persons engaged in the provision of medical services for compensation, might operate a retail medical supply business offering medical devices for sale from the same premises at which they perform medical services for compensation is subject to the law and regulations regarding Petitioners' professional licensure. This Opinion makes no determination of the legality and viability of such an arrangement. However, the facts in this Opinion do not indicate that Petitioners make any sales of medical equipment separate from the provision of medical services to patients. Thus, Petitioners' purchases of such medical equipment provided to their patients in conjunction with the provision of medical services for compensation are subject to sales tax under section 1105(a) of the Tax Law and do not qualify as purchases made for resale as such.

DATED: July 26, 2007

/s/
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.