

**New York State Department of Taxation and Finance**  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-12(13)S  
Sales Tax  
June 27, 2012

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S111214A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its product qualifies for the exemption under the sales and use tax law for medical equipment and supplies. We conclude that Petitioner's product does not qualify for the exemption.

**Facts**

Petitioner's product is a kegel exercise device. The product is a resistive device used to improve and/or prevent incontinence and promote a healthier female core. The device is portable, resistive and easy to insert, remove and clean. The product is inserted into a user's vagina and the user will perform kegel muscular contractions against the device to strengthen pelvic floor muscles. The device will aid in strengthening the pelvic floor muscles by keeping them young and healthy to prevent and eliminate incontinence. The device will also increase sexual pleasure and, if used prior to childbirth or pelvic surgery, it will ease childbirth and the recovery of childbirth or pelvic surgery.

**Analysis**

Retail sales of tangible personal property are subject to sales tax. *See* Tax Law § 1105(a). Tax Law § 1115(a)(3) exempts medical equipment and supplies from sales and compensating use tax, unless purchased at retail for use in performing medical and similar services for compensation. An exemption is strictly construed and the burden of proving that an exemption applies is on the person claiming the exemption. *See* 20 NYCRR § 528.1(c).

Medical equipment is defined as machinery, apparatus and other devices other than prosthetic aids, hearing aids, eyeglasses and artificial devices, etc., 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. *See* 20 NYCRR 528.4(e)(1). To qualify for the exemption, the equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury, or physical incapacity. *See* Tax Law § 1115(a)(3); 20 NYCRR § 528.4(e)(2). As stated above, Petitioner's device can be used for many different purposes. Some of these uses are to improve and/or prevent incontinence, promote a healthier female core, increase sexual pleasure, ease childbirth and ease recovery from childbirth or pelvic surgery. Since Petitioner has not shown that its product is to be primarily and customarily used for medical purposes and Petitioner has stated that it may be generally useful in

the absence of illness, injury or physical incapacity, the device will not qualify for the exemption under the sales and compensating use tax laws as medical equipment and supplies.

DATED: June 27, 2012

/S/  
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DEBORAH R. LIEBMAN  
Deputy Counsel

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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.