

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-17(22)S
Sales Tax
September 29, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S170612A

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether a device it produces, a filter [REDACTED], constitutes a component of a prosthetic device for sales tax purposes. We conclude that Petitioner’s filter is not a component of a prosthetic device, and that its sale to non-exempt hospitals and physicians is subject to New York State and local sales tax.

Facts

Petitioner produces a filter that recently received clearance from the United States Food and Drug Administration to be used in heart valve replacement procedures [REDACTED]. The purpose of this filter is to stop, capture and remove debris that may enter the blood stream [REDACTED], thereby reducing the risk of a stroke. The filter works by being implanted into a patient’s carotid artery at the beginning of a heart valve replacement procedure, which is done by inserting a catheter into a patient’s right arm. Once implanted, the filter collects any debris that is released during the procedure (such as valve tissue, calcification, etc.), and prevents it from traveling to the patient’s brain. At the completion of the procedure, the filter (and any captured debris) is collected and recaptured into the catheter, and removed from the patient. Petitioner’s filter can be used with any [REDACTED] valve (which petitioner does not produce or sell), and will not have any other use. Petitioner anticipates selling this filter to hospitals and physicians.

Analysis

Tax Law § 1105(a) imposes sales tax on the retail sale, except for resale, of tangible personal property. The purchase of medical equipment (including component parts thereof), as well as supplies, required for use in the cure, mitigation, treatment or prevention of illness or disease, however, are exempt from this tax unless “purchased at retail for use in performing medical and similar services for compensation.” Tax Law § 1115(a)(3); 20 NYCRR 528.4(a). *See also, e.g.*, TSB-A-09(16)S. In addition, the purchase of prosthetic aids and artificial devices (“prosthetic devices”), as well as the component parts thereof, are exempt from sales and use tax. *See* Tax Law § 1115(a)(4); TSB-A-09(47)S. Unlike medical equipment, however, sales of prosthetic devices are exempt from sales and use tax even when purchased for use in performing medical services for compensation. *See* Tax Law § 1115(a)(4). *See also*, TSB-A-09(16)S; TSB-A-98(51)S. To qualify as a prosthetic device, the tangible personal property at issue must completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part, be

primarily and customarily used for such purposes, and not be generally useful in the absence of illness, injury or physical incapacity. *See* 20 NYCRR 528.5(b)(1). *See also, e.g.*, TSB-A-09(47)S; TSB-A-09(16)S.

Petitioner's filter is a device that is temporarily inserted into a patient's carotid artery [REDACTED]. It is delivered via a catheter inserted into patient's right arm, and its purpose is to prevent procedure-related debris from entering a patient's brain. The filter is not a component part of a replacement valve, nor is it required for the operation of such. In fact, the filter is entirely removed from a patient once the patient's heart valve replacement procedure has been completed. The filter, therefore, does not replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part, nor is it a component of anything that does, and its purchase is not exempt from sales and use tax pursuant to Tax Law § 1115(a)(4). *See, e.g.*, TSB-A-02(14)S (synthetic bone void filler that does not permanently remain in the body is not a prosthetic aide).

Though Petitioner's filter is not a prosthetic device or component thereof for sales tax purposes, it does constitute medical equipment and/or supplies for purposes of Tax Law § 1115(a)(3). As noted above, medical equipment and supplies "purchased at retail for use in performing medical and similar services for compensation" are not excluded from sales and use taxes. *See* Tax Law § 1115(a)(3). This includes sales made to hospitals and physicians. *See Tax Department's Reclassification of Certain Items and Devices as Medical Equipment or Prosthetic Aids*, TSB-M-14(8)S. *See also, e.g.*, TSB-A-09(47)S (medical supplies subject to sales tax when purchased for use in the performance of medical and similar services for compensation). However, sales of Petitioner's filter that are made to customers that qualify as exempt organizations under Tax Law § 1116(a) would be exempt from the imposition of sales tax, even if the filter is used in providing medical services for compensation, so long as a properly completed exemption certificate is furnished to Petitioner within ninety days of the date of sale. *See* TSB-A-02(14)S; TSB-A-00(23)S.

DATED: September 29, 2017

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