

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (54)S
Sales Tax
August 2, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910419A

On April 19, 1991 a Petition for Advisory Opinion was received from Alcon Laboratories, Inc., 6201 S. Freeway T7-2, Ft. Worth, Texas 76134.

The issue raised by Petitioner, Alcon Laboratories, Inc., is whether its sales of ophthalmic suture materials are exempt from the sales tax under Sections 1115(a)(3) or 1115(a)(4) of the Tax Law.

Petitioner sells ophthalmic surgical products which includes intraocular lenses which replace lenses afflicted with cataracts and suture materials used to close the incision. These sutures are made of silk, dacron nylon, polypropylene, and polyester, are non-dissolving and are designed to remain permanently in the eye. In some situations the sutures are removed if complications are encountered.

Section 1115(a)(3) of the Tax Law provides an exemption from sales tax for:

Drugs and medicines intended or 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 1115(a)(4) of the Tax Law provides an exemption from sales tax for:

Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings.

The Appellate Division in Dental Society of the State of New York v. New York State Tax Commission, 110 A.D.2d 988 held that cavity filling materials, although implanted in patients' teeth, were not prosthetic aids exempt from sales tax under Section 1115(a)(4) of the Tax Law. The use of ophthalmic suture materials is similar to the use of the dental materials and as such do not qualify for the exemption under said Section.

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However, Petitioner's ophthalmic suture materials qualify for the purposes of the exemption contained in Section 1115(a)(3) of Tax Law. Therefore the sale of such supplies to other than those purchasing the materials at retail for use in performing medical services for compensation is exempt from sales tax. Furthermore the sale of such materials to a hospital or other organization qualifying for exemption under Section 1116(a) of the Tax Law would be exempt from the imposition of sales tax even if such entity was using the supplies in performing medical services for compensation.

DATED: August 2, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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