

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

TSB-A-91 (72)S
Sales Tax
November 26, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910827A

On August 27, 1991, a Petition for Advisory Opinion was received from Althin CD Medical, Inc., 14600 N.W. 60th Avenue, Miami Lakes, FL 33014.

The issue raised by Petitioner, Althin CD Medical, Inc., is whether hemodialysis kidney machines and the disposable supplies used in conjunction with the machines are exempt from sales and use taxes as prosthetic aids under Section 1115(a)(4) of the Tax Law.

Petitioner manufactures dialysis machines out-of-state and sells them to hospitals and clinics in New York State.

A person afflicted with kidney failure must undergo hemodialysis three times a week or submit to successful surgery whereby a functioning kidney donated by another human being is transplanted into his/her body. The alternative is death within two weeks. The hemodialysis system includes one needle inserted into the patient's bloodstream, usually through an access opening in the arm. The blood is transported through a plastic tube connected to the needle, into a filter that removes the toxic impurities. The cleansed blood is returned through a second tube and needle combination to the patient's body via a second arm opening. A specially designed machine provides the power to move the blood through the entire process. The needles, tubing, and filters are intended for single use with only one patient. This prevents inadvertent transmission of blood conducted diseases like Hepatitis and AIDS. Hemodialysis is usually performed in a hospital or clinic although a patient trained with a family member can do it at home. Most hemodialysis invoices whether to individuals or institutions are paid by Medicare and private insurance.

Section 1115(a) of the Tax Law, as amended September 1, 1976, provides as follows:

Sec. 1115. Exemptions from sales and use taxes.--(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 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.

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

Section 528.4(e)(1) of the Sales and Use Tax Regulations defines the term "medical equipment" to mean:

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

Moreover, Taxable Status of Medical Equipment and Supplies, Prosthetic Devices and Related Items, Publication 822 (7/87) at page 1, provides that "Hemodialysis equipment" shall be exempt from sales and use tax "unless purchased for use in performing medical or similar services for compensation."

The legislative history as to what constitutes "medical equipment" (Assembly mem, 1976 Legis Ann, at 343) provides that "[m]edical equipment, including iron lungs, wheelchairs, dialysis machine, etc. will be exempt from the Sales Tax when purchased for an individual. Services for exempt medical equipment and devices will also be exempt. The Sales Tax exemption offers relief only to individuals -purchases for use in the performance of services for compensation will continue to be taxed." (emphasis added)

A hemodialysis kidney machine and the disposable supplies used in conjunction with the machine constitute medical equipment rather than a prosthetic aid. This opinion is supported by Section 528.4(e)(1) of the Sales and Use Tax Regulations, Publication 822 (7/87), supra, and the legislative history concerning Section 1115(a)(3) of the Tax Law, supra. Accordingly, pursuant to Section 1115(a)(3) of the Tax Law, the receipts from the sale of hemodialysis kidney machines and its disposable supplies by Petitioner are exempt from sales and use taxes unless purchased at retail for use in performing medical and similar services for compensation.

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It is noted that sales of such equipment and supplies to exempt organizations as defined in Section 1116(a) of the Tax Law are exempt from the imposition of sales tax.

DATED: November 26, 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.