

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

TSB-A-92 (16)S
Sales Tax
February 26, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND TAXATION

ADVISORY OPINION

PETITION NO. S911213A

On December 13, 1991, a Petition for Advisory Opinion was received from Althin CD Medical, Inc., 14600 NW 60th Avenue, Miami Lakes, FL 33014.

The issue raised by Petitioner, Althin CD Medical, Inc., is whether sales of artificial kidneys are exempt from sales and use taxes as sales of artificial organs.

A person afflicted with kidney failure must undergo filtration of his/her blood (dialysis treatment) three times a week, otherwise death will occur within two weeks. The artificial kidney replaces the kidney function of the person during the dialysis treatment. Each artificial kidney is used a single time, and then disposed of.

A dialysis machine provides the power to pump a patient's blood for filtration through the artificial kidney, the same way the human heart pumps a person's blood through normal, functioning kidneys for filtration. In the human body, the kidneys provide no pumping action. The operation of a dialysis machine and an artificial kidney, are as interrelated as the operation of the human heart and human kidneys. Their functions are as distinct as the aforementioned natural organs.

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:

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(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. (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. (emphasis added)

Moreover, the Department of Taxation and Finance publication, 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. Althin CD Medical, Inc., Adv Op Comm T&F, November 26, 1991, TSB-A-91(72)S.

Therefore hemodialysis equipment and supplies sold by Petitioner, which includes artificial kidneys, pursuant to Publication 822 (7/87), supra and the legislative history concerning Section 1115(a)(3) of the Tax Law, supra, constitutes medical equipment and supplies. Accordingly, pursuant to Sections 1115(a)(3) of the Tax Law, Section 528.4(e)(1) of the Sales and Use Tax Regulations and Althin CD Medical, Inc., supra, the receipts from the sale of artificial kidneys by Petitioner are exempt from sales and use taxes unless purchased at retail for use in performing medical and similar services for compensation.

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

DATED: February 26, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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