

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

TSB-A-93 (37)S  
Sales Tax  
June 21, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930125A

On January 25, 1993, a Petition for Advisory Opinion was received from Bruce Mac Corkindale, CPA, 137 Broadway, Suite H, Amityville, NY 11701.

The issues raised by Petitioner, Bruce Mac Corkindale, CPA, are:

1. Whether purchases by an orthotist of custom made braces and any parts which are used to manufacture braces to be used in performing a medical service for compensation are subject to State and local sales and use taxes.
2. Whether purchases by an orthotist of crutches, canes and walkers to be sold to patients where no medical service is provided are subject to State and local sales and use taxes.
3. Whether an orthotist that delivers a prefabricated brace to a patient and assists in fitting and adjusting the brace is performing a medical service.

Petitioner's client is an orthotist certified by the American Board of Certification in Orthotics. An orthotist provides orthotic devices and consultation to the public. A majority of an orthotist's work is in the manufacturing of or delivery of custom made and stock (prefabricated) braces to individual patients.

Petitioner's client maintains an office in a hospital, as well as a private office, for the purpose of providing orthotic services to patients of the immediate community. Generally, a patient's diagnosis is determined by an orthopedic doctor or rehabilitation doctor. Such diagnosis indicates what extremity of the patient's body is to be braced. The orthopedic doctor writes a prescription describing what the brace is to be made of i.e., material, components, etc. The patient then locates an orthotist who measures, casts, fabricates, fits, adjusts and delivers such brace to the patient.

Where a doctor prescribes a custom made brace for a patient, the orthotist takes a cast (impression) and sends this impression to a company that manufactures a finished product (brace). The orthotist then fits the brace on the patient and renders advice as to the proper use and care of the brace. There is one charge for the brace. No fee is charged for fitting the brace or for rendering advice.

Braces can be constructed of various metals (aluminum, steel or laminated plastic). Parts are purchased from a company specifically designed for the orthotics industry and then hand crafted and covered with leather.

In some cases, a brace does not have to be custom made but can be selected from an inventory of prefabricated braces. The brace is then adjusted by the orthotist to fit the particular patient's needs.

In addition to providing orthotic services to patients of the hospital, the orthotist maintains an inventory of canes, crutches and walkers for sale. If a doctor prescribes that a patient should use a cane, crutches, or a walker, a hospital employee will requisition such item from the orthotist's office. No medical service is provided by the orthotist to the patient.

Section 1115 of the Tax Law provides, in part, 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. (emphasis added)

Section 528.4 of the Sales and Use Tax Regulations provides, in part, as follows:

\* \* \*

(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.

\* \* \*

(4) Medical equipment is not exempt if purchased by a person performing medical or similar services for compensation.

\* \* \*

(f) Orthopedic or corrective shoes. (1) Shoes made to specifications prescribed by a podiatrist, orthopedist or other physician for the purpose of treating or preventing illnesses or disease, or to correct physical incapacity are deemed to be medical equipment and exempt from tax.

Example: Shoes made from a mold of a foot or shoes with special devices to straighten malformed bones are exempt.

\* \* \*

(h) Taxable medical equipment and supplies. (1) Medical equipment and supplies purchased for use in performing medical or similar services for compensation are not exempt from tax.

Example 1: Stethoscopes, syringes, wheel chairs, etc. purchased by physicians are not exempt.

Example 2: Resuscitators, stretchers and other such equipment purchased by an ambulance service are not exempt.

Example 3: Bandages, gauze, dressings, etc. are not exempt when purchased by a physician, ambulance service or other person who will use them in performing a medical service for compensation.

Example 4: Dental supplies such as porcelain, mercalloy, gold, silver, acrylic denture base, amalgam, composite resin, silicate, and dental floss are not exempt when purchased by a dentist who will use them in performing a dental service for compensation.

(2) Medical services for human beings include but are not limited to the practices of medicine, dentistry, therapy, chiropractic, nursing, podiatry, optometry and radiology, whether performed by a private practitioner, clinical laboratory, hospital, nursing home, ambulance service, clinic, or health maintenance facilities. (emphasis added)

(3) It is immaterial whether the compensation is paid to the practitioner or institution by the patient or another source.

Moreover, Taxable Status of Medical Equipment and Supplies, Prosthetic Devices and Related Items, Publication 82 (7/87) at page 1, provides that braces, canes, crutches and walkers used as medical equipment shall be exempt from sales and use taxes "unless purchased for use in performing medical or similar services for compensation."

With respect to issue "1", pursuant to Sections 528.4(a) and (e) of the Sales and Use Tax Regulations and Publication 822, supra, braces, including any component parts, constitute medical equipment, and are subject to sales tax if purchased for use in performing medical or similar services for compensation.

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Petitioner's client's activities do not constitute a medical service as defined in Section 528.4(h)(2) of the Sales and Use Tax Regulations. Accordingly, Petitioner's client's purchases of custom braces and any component parts thereof are not subject to sales and use taxes.

Concerning issue "2", pursuant to Publication 822, supra, crutches, canes and walkers constitute "medical equipment" within the meaning and intent of Section 1115(a)(3) of the Tax Law and Section 528.4(e)(4) of the Sales and Use Tax Regulations and are subject to sales tax if purchased by a person performing medical or similar services for compensation. Pursuant to Section 528.4(h)(2) of the Sales and Use Regulations Petitioner's client is not performing a medical service. Therefore, Petitioner's client's purchases of crutches, canes and walkers are not subject to sales and use taxes.

With respect to issue "3", Petitioner's client's activities do not constitute a "medical service" within the meaning and intent of Section 1115(a)(3) of the Tax Law and Section 528.4(h) of the Sales and Use Tax Regulations. Petitioner's client's activities of measuring, casting, fitting and adjusting of custom and prefabricated braces are similar to those of someone who fabricates orthopedic or corrective shoes, the charges for which are exempt from sales tax in accordance with Section 528.4(f) of the Sales and Use Tax Regulations, and therefore do not constitute the performance of a taxable medical or similar service for compensation.

DATED: June 21, 1993

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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