

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

TSB-A-94 (49)S  
Sales Tax  
October 18, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940825A

On August 25, 1994 a Petition for Advisory Opinion was received from Paul C. Maggio d/b/a Patchogue Nursing Ctr., 25 Schoenfeld Blvd., Patchogue, New York 11772.

The issue raised by Petitioner, Paul C. Maggio d/b/a Patchogue Nursing Ctr., is whether Petitioner is required to pay sales tax on his purchases of disposable diapers for use on his nursing home patients.

Petitioner is the operator of a skilled nursing facility and as such provides medical and hotel type services to his residents. He is compensated for these services by private patients who pay directly for the services and from third parties, either the Medicare or Medicaid programs who pay for 90% of the patient costs.

The Medicare program divides the services into two categories: routine and ancillary. Included in the routine services are nursing, dietary, housekeeping, laundry and linen. The ancillary services include items like physical therapy, occupational therapy, enteral feeding and laboratory tests. By regulation there can be no additional charge for any item considered routine, but each of the ancillary services can be charged for. The same rules are applied to private paying patients.

Petitioner supplies disposable diapers to residents of the nursing home who require them without any additional charge.

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

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.

Section 528.4(h)(2) of the Sales and Use Tax Regulations provides that:

Medical services for human beings include but are not limited to the practices of medicine, dentistry, physical 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.

Taxable Status of Medical Equipment and Supplies, Prosthetic Supplies and Related Items, New York State Department of Taxation and Finance Publication 822 (7/87), in accordance with Section 1115(a)(3) of the Tax Law, states that the purchase of incontinent liners, incontinent pads and incontinent pants are exempt from sales tax unless purchased for use in performing medical or similar services for compensation. Disposable diapers purchased for use on adults in a nursing home are similar to the above items and are entitled to the same exemption from sales tax.

However, in the instant case Petitioner's purchases of disposable diapers to be used on patients who are resident in his nursing home are not exempt from sales tax since he is operating a nursing home providing medical services for human beings as defined in Section 528.4(h)(2) of the Sales and Use Tax Regulations and he is purchasing the diapers at retail for performing medical and similar services for compensation which purchases are an exception to the exemption provided for in Section 1115(a)(3) of the Tax Law.

It is noted that Petitioner's charges to the patients in the nursing home are not subject to sales tax, even though Petitioner may as part of his services provide disposable diapers for their use, since there is no provision in the Sale Tax Law imposing sales tax on nursing home services.

DATED: October 18, 1994

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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