

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

TSB-A-96 (1)S
Sales Tax
January 8, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950621B

On June 21, 1995, a Petition for Advisory Opinion was received from Pegasus Airwave Inc., 5300 Broken Sound Boulevard, Suite 100, Boca Raton, Florida 33487.

The issues raised by Petitioner, Pegasus Airwave Inc., are whether the sale of its therapeutic air mattress system is exempt from sales tax pursuant to Section 1115(a)(3) of the Tax Law and Section 528.4 of the Sales and Use Tax Regulations and, if so, whether the exemption applies to the sale or lease of the product to individuals as well as institutions (i.e. hospitals, nursing homes).

Petitioner's therapeutic system, as described by the Petitioner, "is a unique powered air mattress system for immobilized patients at high risk of or suffering from, any pressure sores, bed sores, decubitus ulcers and other skin trauma problems. Fitted into a standard hospital bed or a patient's own bed at home, the Pegasus Airwave System alleviates pain and therapeutically aids and accelerates the skin's healing process by providing zero pressure and allowing 100% air flow to the wound. It is also used as a prevention to the addition or recurrence of any future ulcers."

Petitioner's therapeutic system is primarily leased and sometimes sold outright to individuals under the direction of and with a written prescription from a medical doctor. It is also leased or sold to institutions, usually hospitals or nursing homes, through a purchase order or contractual agreement. It is only used for the medical treatment of skin trauma and not used for any non-medical purpose.

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

[d]rugs 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 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, eyeglasses 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. (2) To qualify, such equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury or physical incapacity.

* * *

(3) Replacement parts for medical equipment are exempt from tax provided such replacement parts are identifiable as medical equipment replacement parts. If a replacement part is not identifiable as a part for medical equipment, the purchaser must pay the tax at the time of purchase. The purchaser may then apply directly to the Sales Tax Bureau for a refund of the tax paid provided he can show that the part was used to replace a defective part on exempt medical equipment.

(4) Medical equipment is not exempt if purchased by a person performing medical or similar services for compensation. (See subdivision (g) of this section)

Petitioner's air powered mattress system, for use as described above, qualifies for the exemption from sales and compensating use tax provided by Section 1115(a)(3) of the Tax law and Section 528.4 of the Sales and Use Tax Regulations.

However, the exemption contained in Section 1115(a)(3) of the Tax Law and Section 528.4 of the Sales Tax Regulations does not apply to the sale of medical equipment and supplies, other than drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

Therefore, when Petitioner sells or leases its products to someone who will use them in performing medical and similar services for compensation, such as a doctor or hospital, Petitioner must collect sales or use tax due from the purchaser. However, if the sale is to an organization exempt under section 1116(a) of the Tax Law or to someone who will resell them, such as a wholesaler, then no sales or use tax will be due, provided that Petitioner obtains the appropriate exemption certificate from the purchaser.

DATED: January 8, 1996

/s/
DORIS S. BAUMAN
Director
Technical Services Bureau

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