

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

TSB-A-98(51)S  
Sales Tax  
August 4, 1998

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S971209B

On December 9, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Comprehensive Dialysis Center of WNY, Inc., 6010 Main Street, Williamsville, NY 14221.

The issue raised by Petitioner, Comprehensive Dialysis Center of WNY, Inc., is whether the dialysis machines and dialyzer reprocessing system it has purchased are exempt from sales and compensating use tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

The human kidney is one of the most important organs in the human body. It is a life-sustaining organ whose primary function is to filter blood to remove toxic substances from it. In patients with failed kidneys, an artificial kidney (dialyzer) performs the filtering function of the human kidney.

There is an interrelationship between a dialyzer and a dialysis machine. The dialyzer cannot perform without the aid of a dialysis machine. The dialysis machine performs various functions. The first is water treatment, where the machine takes in cold distilled water, heats it to body temperature, and mixes it with the prescribed amount of pre-mixed chemicals (sodium bicarbonate and acid). Secondly, the machine controls the temperature of the dialysate fluid, and delivers it to the dialyzer. The machine pumps the patient's blood through this artificial organ and returns it to the patient in a continuous manner, during the treatment. Another function of the dialysis machine is fluid removal. Without the use of kidneys, patients are often unable to eliminate fluid. After the precise amount to be removed is determined, the ultrafiltration gauge is adjusted. The fluid is then removed out of the blood as it travels through the dialyzer.

Throughout the process the dialysis machine monitors various aspects of the treatment to ensure the safety of the patient. Gauges to help monitor the speed of the blood, the temperature of the water and the blood, and the pressure of the blood lines are in place, since any variation in these factors can adversely affect the patient. The machine also monitors the blood lines to ensure that no air is introduced. Air that reaches the patient can be fatal.

Petitioner has submitted with its petition a list of equipment purchased which it believes qualifies for exemption from sales and compensating use tax. Petitioner's list is comprised of dialysis machines and one dialyzer reprocessing system. The dialyzer reprocessing system readies the dialyzer for treatment by cleaning and purifying it.

Applicable Law and Regulations

Section 1105(a) of the Tax Law imposes a tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1115(a) of the Tax Law exempts from the sales tax imposed by Section 1105(a) of the Tax Law and from the compensating use tax imposed under Section 1110:

\* \* \*

(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 . . . 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.

Section 528.4(e) of the Sales and Use Tax Regulations provides, in part:

*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.

\* \* \*

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

Section 528.5 of the Sales and Use Tax Regulations provides, in part:

(a) *Exemption.* Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof, purchased to correct or alleviate physical incapacity in human beings are exempt from the tax.

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(b) *Qualifications.* (1) In order to qualify as a prosthetic aid, a hearing aid, eyeglasses or an artificial device, the property must either completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part and must be primarily and customarily used for such purposes and not be generally useful in the absence of illness, injury or physical incapacity.

Opinion

Section 1115(a)(3) of the Tax Law exempts medical equipment and supplies from sales and compensating use tax, unless purchased at retail for use in performing medical and similar services for compensation. Section 1115(a)(4) exempts prosthetic aids and artificial devices used to correct or alleviate physical incapacity in human beings, even when purchased at retail by providers of medical services.

The function of the dialysis machine is key in determining whether it should be classified as medical equipment or as a prosthetic device (see Microvasive, Inc., Adv Op Comm T&F, March 28, 1989, TSB-A-89(9)S). In patients with diseased kidneys, an artificial kidney (dialyzer) performs the filtering function of the human kidney. The dialyzer cannot perform without the aid of a dialysis machine. The functions of the dialysis machine, as described by Petitioner, are to prepare the dialysate fluid, deliver it to the dialyzer, pump the patient's blood through the dialyzer for purification then propel the cleansed blood back to the patient and monitor the dialysis treatment. This hemodialysis regimen replaces the function of a failed, vital body part as required by Section 528.5(b)(1) of the Sales and Use Tax Regulations. Accordingly, it is the Department's position that, as presented by Petitioner, dialysis machines qualify as prosthetic aids under Section 1115(a)(4) of the Tax Law. Therefore, Petitioner's purchases of dialysis machines are exempt from sales and use taxes pursuant to Section 1115(a)(4) of the Tax Law whether or not such devices are purchased for use in performing medical or similar services for compensation.

The dialyzer reprocessing system, which prepares and readies the dialyzer for use in dialysis, does not replace a missing body part or function and therefore does not qualify for exemption as a prosthetic device under Section 1115(a)(4) of the Tax Law. It does, however, constitute medical equipment as

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defined in Section 528.4(e)(1) of the Sales and Use Tax Regulations. Therefore, pursuant to Section 1115(a)(3) of the Tax Law, its purchase at retail by Petitioner for use in performing medical and similar services for compensation is subject to sales tax.

DATED: August 4, 1998

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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