

Taxability of Strength-Training Equipment

The issue is whether cardiovascular or strength-training equipment prescribed by a physician is medical equipment within the meaning of section 1115(a)(3) of the Tax Law.

Company A sells cardiovascular, strength-training, and other fitness equipment and accessories. Some of Company A's customers furnish a physician's prescription that states that the customer needs the equipment for medical purposes, such as cardiac rehabilitation.

Applicable law and regulations

Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1115 of the Tax Law provides, in part:

(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.

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

(a) *Exemption.* (1) Drugs and medicines intended for the 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 are exempt.

* * *

(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.

Example 1: Items such as hospital beds, wheel chairs, hemodialysis equipment, iron lungs, respirators, oxygen tents, crutches, back and neck braces, trusses, trapeze bars, walkers, inhalators, nebulizers and traction equipment are exempt medical equipment.

Example 2: A medical patient purchases an air conditioner to be used to lower air temperature to alleviate his illness. Since an air conditioner is nonmedical in nature, it is not exempt from the tax.

Opinion

Company A sells cardiovascular, strength-training, and other fitness equipment and accessories and contends that such equipment is exempt under section 1115(a)(3) of the Tax Law when sold pursuant to a physician's prescription.

Section 528.4(e)(2) of the Regulations states that to qualify for the sales tax exemption, the medical equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury, or physical incapacity.

Company A's exercise equipment is primarily and customarily used to improve or maintain one's health and fitness. However, not all items related to a person's health are primarily and customarily used for medical purposes. While the Tax Law does not define "medical purposes," section 528.4(e)(2) of the Regulations specifies that to qualify, medical equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury, or physical incapacity in order to be exempt from sales tax.

The purchase of gym equipment is generally not considered to be a purchase of medical equipment since the equipment is generally considered useful in the absence of illness, injury, or physical incapacity. Such purchase is not converted into an exempt transaction because it is motivated by the recommendation or prescription of a physician or other medical services provider. The sales tax exemption for purchases of medical equipment is limited in scope and not every device employed to remedy or lessen physical infirmity or disability qualifies for the exemption as medical equipment even though the use is prescribed by a medical services provider. (See *Matter of Craftmatic Comfort Manufacturing Corp. v. State Tax Commission*, 118 AD2d 995, revd on dissenting opinion below 69NY2d 755.) Moreover, exercise equipment

is specifically listed as taxable in Publication 822, *Taxable Status of Medical Equipment and Supplies, Prosthetic Devices, and Related Items*, (6/01) page 6. Therefore, Company A's sales of exercise equipment, whether pursuant to a physician's prescription or not, are subject to sales tax.

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