

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance (“the Department”) received a Petition for Advisory Opinion from [REDACTED] (hereinafter “Petitioner”). Petitioner asks whether New York State and local sales tax applies to all items purchased by nursing homes or long term care facilities located in New York and consumed exclusively by residents covered under Medicaid and Medicare.

We conclude that New York State and local sales tax applies to medical equipment and supplies and other consumable items, such as toilet articles and bedding, purchased by a nursing home or long term care facility, unless such facility is an exempt organization pursuant to Tax Law § 1116(a), regardless of the payment status of the patient consuming the items. However, food and food products purchased by a nursing home or long term care facility for its patients are exempt pursuant to Tax Law § 1115(a)(1) and drugs or medicine purchased by a nursing home or long term care facility for its patients are exempt pursuant to Tax Law § 1115(a)(3). Nursing homes and long term care facilities are also exempt from the State portion of sales tax due on the purchase of utilities used in the facility pursuant to Tax Law § 1105-A. However, such facilities will still be subject to any local sales tax imposed on the purchase of utilities.

Facts

Petitioner operates for-profit nursing homes in several states. Petitioner purchases consumable items, such as food, food products, drugs or medicine, medical equipment, toilet articles, bedding, laundry, utilities, and general medical supplies that are paid for and used exclusively by patients covered by Medicaid and Medicare. When Petitioner makes purchases for its Medicaid and Medicare recipients, the supplier will send Petitioner a bill. Petitioner then sends a bill to Medicaid or Medicare for each patient, but that bill is not itemized by type of consumable item.

Analysis

Sales tax is imposed on the sale, except for resale, of tangible personal property, except as otherwise provided by Article 28 of the Tax Law. *See* Tax Law § 1105(a). Generally, when sold for human consumption, food products, except for candy and confectionary and certain beverages (e.g., soft drinks, beverages with less than 70% natural fruit juice), are exempt from sales tax. *See* Tax Law §§ 1105(d), 1115(a)(1). Accordingly, aside from the exceptions stated above, the purchase of food by nursing homes for provision to residents in New York State is exempt from sales tax. However, if meals are prepared by a third party, the nursing home would be purchasing a catering service and such charge would be subject to tax. *See* Tax Law § 1105(d); 20 NYCRR § 527.8(f).

Tax Law § 1115(a)(3) provides as follows:

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.

Accordingly, the purchase of drugs and medicine are exempt from sales and use tax. *See* Tax Law § 1115(a)(3); 20 NYCRR § 528.4(a)(3). However, medical equipment and supplies purchased at retail for use in performing medical services for compensation are not exempt. *See id.*

“A nursing home is a facility that is engaged in providing medical or similar services for compensation.” TSB- A-07(23)S. Therefore, unless the nursing home is an exempt organization under Tax Law § 1116(a)(4), purchases of medical equipment and supplies are not exempt from sales tax.

Additionally, the other items listed by Petitioner, including toilet articles and bedding, do not qualify for an exemption and are tangible personal property subject to tax pursuant to Tax Law § 1105(a). However, to the extent a nursing home buys clothing and footwear for patients (including adult diapers), such items are tax exempt pursuant to Tax Law § 1115(a)(30), if the receipt is less than \$110 per article of clothing or pair of shoes. This exemption does not apply to the imposition of local sales and use tax unless the county or city in which the sale occurs elected this exemption. *See* Tax Law § 1210(a)(1)(i); TSB-A-07(23)S; *Sales and Use Tax Rates on Clothing and Footwear*, Publication 718-C.

Tax Law § 1105-A provides that receipts from retail sales made on and after October first, nineteen hundred eighty, of fuel oil, coal, wood, propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas purchased for residential purposes, are not subject to State sales tax due pursuant to Tax Law § 1105(a) and (b). Because a nursing home is residential in nature, its purchase of utilities, such as electricity and heat, are exempt from State sales and use tax. *See* TSB-A-90(60)S. However, Tax Law § 1105-A does not affect the imposition of local sales and use tax on such purchases. *See Local Sales and Use Tax Rates on Residential Energy*, Publication 718-R.

Finally, as noted above, the patient’s status as a Medicaid or Medicare recipient has no bearing on the taxability of the purchases made by the for-profit nursing home or long term care facility.

DATED: July 21, 2020

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.