

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-00(12)S  
Sales Tax  
February 29, 2000

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S991221B

On December 21, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Fresenius USA, Inc., 2637 Shadelands Drive, Walnut Creek, CA 94598. Petitioner, Fresenius USA, Inc., provided additional information pertaining to the Petition on January 5, 2000.

The issue raised by Petitioner is whether its sales of fistula needles used in hemodialysis treatment are subject to sales and compensating use taxes.

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

Petitioner previously sold equipment used in hemodialysis treatment. Hemodialysis treatment is a way to remove toxins and fluid from the blood of a person afflicted with kidney failure. It is usually performed three times a week for four hours at a time. Hemodialysis is not used unless a person has diseased kidneys which no longer function properly or no longer function at all.

At each dialysis treatment, the toxic substances are removed from the patient's blood using a filter called a dialyzer (artificial kidney). A dialysis machine provides the power to pump the blood from the patient, through the dialyzer, and return it to the patient in a continuous manner. The method of vascular (blood) access for routine hemodialysis is via an artery and a vein in the patient's forearm which are surgically connected. The surgical connection between the artery and vein is called an AV (arteriovenous) fistula. Two "fistula needles," each connected to a hollow plastic tube, or line, are inserted in the AV fistula. One line carries the patient's blood out of the body (artery) to the dialyzer to be cleaned. The cleansed blood is returned to the body (vein) through the second tube and needle combination in the patient's AV fistula. Without well-functioning vascular access, other hemodialysis technology is rendered virtually useless.

The fistula needles are exclusively used in hemodialysis treatment. They are short (1"), sharp needles which provide minimal damage to the patient on insertion and have very large openings to enable high blood flows, at prescribed rates, which expedite the dialysis process. The needles are intended for single use with only one patient.

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

\* \* \*

(g) *Supplies.* (1) Supplies used in the cure, mitigation, treatment or prevention of illnesses or diseases or for the correction and alleviation of physical incapacity are exempt.

\* \* \*

(2) Medical supplies are not exempt if purchased by a person performing medical or similar services for compensation. . . .

(h) *Taxable medical equipment and supplies.* (1) Medical equipment and supplies purchased for use in performing medical or similar services for compensation are not exempt from tax.

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.

(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**

Petitioner sold fistula needles used in hemodialysis treatment. 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 fistula needles is key in determining whether they should be classified as medical equipment or as prosthetic aids (see Comprehensive Dialysis Center of WNY, Inc., Adv Op Comm T&F, August 4, 1998, TSB-A-98(51)S; Cobe Laboratories, Inc., Adv Op Comm T&F, August 6, 1998, TSB-A-98(53)S).

In patients with diseased kidneys that are malfunctioning or have totally ceased functioning, the hemodialysis regimen replaces the function of these failed, vital organs. Therefore, as determined in Comprehensive Dialysis Center of WNY, Inc. and Cobe Laboratories, Inc., *supra*, certain items essential to the dialysis process qualify as prosthetic aids under Section 1115(a)(4) of the Tax Law. These items include the dialyzer (artificial kidney), dialysis machine and the tubing (lines) which transport the patient's blood to and from the body. See Cobe Laboratories, Inc., *supra*. When dialysis is carried out via an arteriovenous fistula, these blood lines are connected to the patient's blood vessels through the fistula needles which are the subject of this Advisory Opinion. As such, these needles contribute to the restoration of the lost function of the kidney as part of the hemodialysis regimen. Moreover, since fistula needles are specifically designed for and exclusively used in hemodialysis treatment, they satisfy the regulatory requirement that they be primarily and customarily used for medical purposes and are not generally useful in the absence of illness, injury or physical incapacity. See Section 528.5(b) of the Sales and Use Tax Regulations. Accordingly, Petitioner's sales of fistula needles used in hemodialysis treatment qualify for the sales tax exemption for prosthetic aids under Section 1115(a)(4) of the Tax Law and are not subject to New York sales and compensating use taxes, regardless of whether they are purchased for use in performing medical or similar services for compensation.

It is noted that needles/syringes in general do not prosthetically replace missing body parts or functions and do not qualify as prosthetic supplies or devices under Section 1115(a)(4) of the Tax Law. Rather, they are considered medical supplies described in Section 1115(a)(3) of the Tax Law, the charges for which are subject to sales and use taxes when purchased for use in providing medical

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or similar services for compensation. See New York State Department of Taxation and Finance Publication 822, Taxable Status of Medical Equipment and Supplies, Prosthetic Devices and Related Items, 7/87.

DATED: February 29, 2000

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

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