

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

TSB-A-00(41)S
Sales Tax
October 12, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000628A

On June 28, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Prime Medical, Inc., c/o Tax Department, 95 Hayden Avenue, Lexington, MA 02420-9192.

The issue raised by Petitioner, Prime Medical, Inc., is whether the dialysate used in hemodialysis treatment is a prosthetic aid that is exempt from sales and compensating use tax under Section 1115(a)(4) of the Tax Law.

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

A patient afflicted with kidney failure must undergo hemodialysis treatment, i.e., filtration of the blood, so that toxins and excess fluids, which the kidney normally gets rid of, are removed from the body. Dialysis treatment is not used unless an individual has diseased kidneys which no longer function properly or at all.

During dialysis treatment, an artificial kidney replaces the filtering function of a human kidney through the use of a semipermeable membrane and a prescribed dialysis solution (dialysate) specifically formulated for each patient. Blood from the patient flows into the artificial kidney. Inside the artificial kidney, blood and dialysate are separated by the semipermeable membrane. Through the processes of diffusion and osmosis, and dependent upon the composition of the dialysate solution on the side of the membrane opposite the blood, waste products and excess fluids pass from the blood across the membrane and into the dialysate. The cleansed blood is returned to the patient, and the waste-containing dialysate solution is discarded.

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.

* * *

(c)(2) Supplies used in conjunction with prosthetic aids, hearing aids, eyeglasses and artificial devices are not exempt from the tax.

Opinion

Section 1115(a)(4) of the Tax Law exempts from sales and compensating use taxes receipts from the sales of prosthetic aids (and their component parts) which alleviate physical incapacity in human beings. To qualify as a prosthetic aid, 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. See Section 528.5(b)(1) of the Sales and Use Tax Regulations.

In patients with diseased kidneys that are malfunctioning or have totally ceased functioning, the hemodialysis regimen replaces the function of these failed, vital organs. Utilizing the principles of diffusion and osmosis, the hemodialysis process removes toxic substances and excess fluids from the patient's blood, thereby substituting the life-sustaining filtration function of the human kidney. Therefore, certain items essential to the dialysis process, despite their extracorporeal nature, fall within the criteria for prosthetic aids established in Section 528.5(b)(1) of the Sales and Use Tax Regulations and qualify as such under Section 1115(a)(4) of the Tax Law (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). These items include the dialyzer (artificial kidney), dialysis machine, tubing/connectors (blood lines) which transport the patient's blood to and from the body and fistula needles that connect the blood lines to the patient's blood vessels (see Fresenius USA, Inc., Adv Op Comm T&F, February 29, 2000, TSB-A-00(12)S; Cobe Laboratories, Inc., *supra*).

Similar to the items described above, dialysate replaces a missing body part or function, as it helps replace the lost filtration function of the kidney as part of the hemodialysis regimen. Inside the artificial kidney, blood and dialysate are separated by a semipermeable membrane. Due to the specifically prescribed composition of the dialysate solution that flows on the side of the membrane opposite the blood, waste products and excess fluids are pulled from the blood through the processes of diffusion and osmosis, and pass across the semipermeable membrane into the dialysate. The waste-containing dialysate is then discarded. The filtration function could not be performed without the dialysate. Moreover, since dialysate is specifically designed for and exclusively used in hemodialysis treatment, it satisfies the regulatory requirement that it be primarily and customarily used for medical purposes and is not generally useful in the absence of illness, injury or physical incapacity. Accordingly, it is the Department's position that, as presented by Petitioner, the dialysate solution used in the hemodialysis process qualifies for the sales tax exemption for prosthetic aids under Section 1115(a)(4) of the Tax Law and is not classified as a medical supply which, under Section 1115(a)(3) of the Tax Law, is taxable when purchased at retail for use in the performance

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of medical or similar services for compensation (see Comprehensive Dialysis Center of WNY, Inc., supra; Fresenius USA, Inc., supra). Therefore, receipts from sales of dialysate used in hemodialysis are exempt from the imposition of sales and use tax whether or not it is purchased for use in performing medical or similar services for compensation.

It is noted that medical solutions in general, e.g., sterile water and other intravenous solutions, do not prosthetically replace missing body parts or functions and do not qualify as prosthetic aids or devices under Section 1115(a)(4) of the Tax Law, even when used in conjunction with prosthetic aids. See Section 528.5(c)(2) of the Sales and Use Tax Regulations.

DATED: October 12, 2000

/s/
Jonathan Pessen
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Technical Services Division

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