

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-12(16)S
Sales Tax
July 5, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120511A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether several products, Orthovisc, Euflexxa, and Hyalgan, all used to treat osteoarthritis of the knee, are exempt from sales tax pursuant to Tax Law Section 1115(a)(3).

We conclude that Orthovisc, Euflexxa and Hyalgan are exempt from tax under Tax Law Section 1115(a)(3) on the grounds that they are all products consumed by humans for the preservation of health.

Facts

Petitioner submits the following facts: osteoarthritis is the most common form of arthritis and can damage any joint in a person's body, including the knee. A healthy knee is surrounded by synovial fluid, which acts as a shock absorber to cushion and protect the knee. A knee damaged by osteoarthritis has little or no joint fluid, resulting in pain.

Orthovisc is the only FDA-approved treatment of osteoarthritis of the knee made from ultra-pure hyaluronan, a naturally occurring lubricant found in healthy knee joints. Euflexxa is a form of hyaluronic acid (HA) and is a treatment of osteoarthritis of the knee that is similar to the synovial fluid found in healthy knees. Hyalgan is also a treatment for osteoarthritis of the knee, the principal component of which is a naturally derived substance called hyaluronan. Hyaluronan is a chemical found in the body, in particularly high amounts in joint tissues and in the fluid that fills the joints.

Each of the above products is administered by a physician, as a series of injections into the knee. These treatments are for those patients who are not getting enough relief from other methods of treatment such as exercise, physical therapy, or simple pain killers. The U.S. Food and Drug Administration classify these three substances as medical devices and has approved them all as treatments for osteoarthritis of the knee.

Analysis

Tax Law Section 1105(a) imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided. Tax Law Section 1115(a)(3) exempts from tax:

Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illness or disease 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 cosmetic or toilet articles notwithstanding the presence of medicinal ingredients therein.

When injected into the knee, Orthovisc, Euflexxa, and Hyalgan all supplement the knee's fluid, thus improving the operation of the knee, and thereby maintaining the patient's mobility. Accordingly, Orthovisc, Euflexxa, and Hyalgan are all products consumed by humans for the preservation of health and are exempt under Tax Law section 1115(a)(3) (*see* 20 NYCRR Section 528.4[b][3]).

DATED: July 5, 2012

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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.