

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

TSB-A-12(5)S
Sales Tax
March 6, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110503A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether certain medical devices designed for the care of cardiac patients, along with related services, are subject to sales and use tax. We conclude that Petitioner's Heart Devices and associated equipment and services are exempt to the extent described below.

Facts

Petitioner is a provider of device-based therapies for patients with advanced heart failure. Petitioner develops, manufactures and markets these medical devices to customers in New York. Petitioner's product and service offerings can be segregated into nine distinct categories, as follows:

(1) Heart Devices

This category includes devices that are worn on or in a patient to replace or assist in the functioning of the human heart. Specifically, they provide left, right or bi-ventricular support for advanced heart failure support. These devices are only used in patients experiencing permanent heart failure and are intended for long-term use. The devices may be implantable or paracorporeal. The paracorporeal devices are attached to the patient at all times. These devices are sold or provided by Petitioner either directly to hospitals, or prescribed by licensed physicians for the treatment of patients and dispensed accordingly.

(2) External Component of Heart Devices

This category includes the external components of the Heart Devices that, together with the internal devices, work interdependently as one device to assist in the functioning of the heart. These components include power sources, cables, monitors, controller units, etc., which are attached to the Heart Devices and are necessary to their function.

(3) Circulatory Support Pump and Related Parts

Another device provided by Petitioner is a pump that provides short-term circulatory support to patients in long-term advanced heart failure. Contrary to the Heart Devices, this pump provides circulatory support only while a patient is hospitalized. The pump is connected to the patient using standard surgical techniques in which certain tubing (cannulae) is implanted in the

patient. The pump has not been qualified for long-term use (that is, use longer than ten days). The “related parts” sold with the circulatory support pump are a motor and console which are necessary for it to function. These related parts have no use except when used in conjunction with the support pump. This device is only used in patients experiencing permanent heart failure.

(4) Medical Instruments Used During Implantation

Certain instruments are used during the implantation of the Heart Devices. These instruments are single-use and are consumed during the surgical process.

(5) Supplies

Petitioner provides certain supplies to its patients for use in conjunction with the Heart Devices discussed above. All of these supplies assist with the functionality of the devices or are essential to that functionality. These supplies are the following: (a) vests/holsters that allow the external components of the devices to be carried more freely; (b) shower kits to protect the external components of the devices from getting wet while the patient is bathing; and (c) rapid charger stations that allow the power sources (i.e., batteries) described in (2) above to be charged more quickly and are integral to the long-term safe use of the Heart Devices. None of this accessory equipment can be used except in conjunction with the Heart Devices.

(6) Full-Service Maintenance Agreement

Petitioner provides maintenance agreements for the Heart Devices for a flat fee that include service for any necessary labor and parts as the need arises. This service agreement is optional, and there is no deductible associated with this agreement. The billing is a lump sum, and does not specify values for services versus parts. Any of the parts used in making the repairs are parts that are identified for use as replacement parts in the Heart Devices.

(7) Service Labor

When requested, Petitioner will provide repair and maintenance services in relation to the Heart Devices, for which it charges at a specified hourly rate. This service is optional.

(8) Service Parts

When requested, Petitioner will provide replacement parts on its devices for the cost of the part. This service is optional. Any of the parts used are parts that are identified for use as replacement parts in the Heart Devices.

(9) Training

Petitioner provides certain training on the implantation of its heart devices, described in item (1), above. This training, provided by trainers in person, is mandatory for providers that are implanting the devices for the first time, and optional otherwise. While certain materials (manuals) may be provided as part of the training, the charge is billed as a lump sum and no charge is made for the materials/manuals.

Analysis

Retail sales of tangible personal property and certain enumerated services are subject to sales tax (Tax Law § 1105[a], [c]). 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. To qualify for the exemption, the equipment must be used for medical purposes and must not be generally useful in the absence of illness, injury, or physical incapacity (Tax Law § 1115[a][3]; 20 NYCRR § 528.4[e][2]). Under section 1115(a)(4) of the Tax Law, receipts from the sales of 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 sales tax, even when purchased at retail by providers of medical services. In order to qualify as a prosthetic aid, hearing aid or an artificial devices, 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 (20 NYCRR § 528.5[b][1]).

(1) Heart Devices

Because the Heart Devices temporarily assist one or both ventricles in the human heart that are permanently malfunctioning, these devices qualify as prosthetic aids and are exempt under Tax Law section 1115(a)(4) (*See, e.g.*, TSB-A-98(51)S [certain items essential to the dialysis process, despite their extracorporeal use, found to fall within the criteria for prosthetic aids]).

(2) External Component of Heart Devices

This equipment is integral to the operation of the Heart Devices and thus appears to qualify as a component part of a prosthetic aid and is therefore exempt (20 NYCRR § TSB-A-00(41)S [dialysate, a type of solution used in the dialysis process, is exempt as a component part of a prosthetic aid]).

(3) Circulatory Support Pump and Related Parts

Because the Circulatory Support Pump and its related parts are only used to assist the function of a permanently malfunctioning human heart and are not generally useful for any other purpose, they all qualify for the prosthetic aid exemption.

(4) Medical Instruments Used During Implantation

These medical instruments do not qualify as prosthetic aids because they do not replace a body function (Tax Law §1115[a][4]). Rather, they appear to qualify as medical equipment because they 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” (20 NYCRR § 528.4[e][1]). Because they qualify as medical equipment, they are exempt from tax except when purchased for use in performing medical services for compensation (20 NYCRR § 528.4[g]).

(5) Supplies

The vests/holsters and shower kits qualify as prosthetic aids because they are integral to the normal use of the Heart Devices (*see* TSB-A-99 [11]S [dust cover for a telecommunication device used by the sight-impaired qualifies as a prosthetic aid]). The rapid charger stations are also exempt as prosthetic aids since they are only suitable for use in charging the batteries powering the Heart Devices and are integral to the long-term safe use of the Heart Devices (*see* Publication 822, Taxable Status of Medical Equipment and Supplies, Prosthetic Devices, and Related Items, at p.5 [manufacturer-designated hearing aid batteries exempt as prosthetic aids]).

(6) Full-Service Maintenance Agreement

Tax Law section 1105(c)(3) provides that the service of repairing, maintaining, or servicing tangible personal property is subject to tax. The receipts from a contract to maintain tangible personal property is taxable under Tax Law § 1105(c)(3) (20 NYCRR § 527.5[c][1]). However, the service of maintaining, repairing or servicing prosthetic aids is exempt (20 NYCRR § 525.5[d]). Here, the Full Service Maintenance Agreement is an optional agreement to maintain and repair the Heart Devices described in item 1, which are exempt medical equipment. Accordingly, the receipts from this contract are also exempt.

(7) Service Labor

See the answer to item (6) above.

(8) Service Parts

Replacement parts for the Heart Devices are exempt because they are clearly identified by the manufacturer as replacement parts (*See* 20 NYCRR § 528.5[c][1]).

(9) Training

The charges for the training are not taxable, as educational services are not among the taxable services. Even assuming that the training services are deemed to be part of the purchase of the Heart Devices (the training is mandatory for providers that are implanting the devices for the first time), the charges for the training would still not be taxable because of the exempt nature of the Heart Devices, as discussed above.

DATED: March 6, 2012

/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.