

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

TSB-A-14(28)S
Sales Tax
August 20, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S121022B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its computer software device qualifies as a prosthetic device exempt from sales tax. We conclude that Petitioner's computer software device qualifies as a prosthetic device under Tax Law § 1115(a)(4), and therefore is exempt from New York State sales and compensating use taxes.

Facts

Petitioner produces a software product that enables a disabled person to utilize a single switch such as an eye blink, eye brow twitch, breath puff, inhale/sip or head rock to operate a standard Windows based computer to restore some ability to communicate via that computer. Petitioner claims its product "replaces or compensates for permanently inoperative or malfunctioning body parts, specifically the loss of a person's ability to use their voice box, arms, or hands through severe injury or major disease such as quadriplegia and Amyotrophic Lateral Schlerosis (ALS or Lou Gehrig's Disease)" Petitioner states that the software is not in any way useful in the absence of a disability, and claims that the software hinders the normal operation of a computer by a non-disabled person.

Analysis

Tax Law § 1115(a)(4) exempts receipts from retail sales of "[p]rosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings" from the sales and compensating use taxes imposed by Tax Law §§ 1105(a) and 1110, respectively, on the sale or use of tangible personal property. Under the Sales and Use Tax Regulations, property qualifies as a prosthetic device if it completely or partially replaces a missing body part or the function of a permanently inoperative or malfunctioning body part, is primarily and customarily used for those purposes, and is not generally useful in the absence of illness, injury or physical incapacity. *See* 20 NYCRR § 528.5(b). Examples of exempt prosthetic devices are automobile controls used by persons with disabilities, Braille typewriters, and optical tactile converters. *See* Publication 822, *Taxable Status of Medical Equipment and Supplies, Prosthetic Devices, and Related Items*. Like those devices, Petitioner's software product, as described by Petitioner, meets the three criteria in the regulations. Petitioner's software replaces the disabled person's motor skills to type or otherwise control a computer's buttons or mouse, is primarily used for that purpose, and is not useful in the absence of a user's disability. Thus, it qualifies as a prosthetic device and is exempt from sales and use taxes when purchased by a person with a disability.

DATED: August 20, 2014

/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.