

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-17(11)S
Sales Tax
July 26, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S151130A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its product, [REDACTED], its components, (collectively the “Product”), and their replacement parts are considered to be prosthetic aids.

We conclude that the Product, its components and replacement parts clearly labeled as such are all considered prosthetic aids and, therefore, are exempt from sales tax.

Facts

The Product is designed to correct a physical deformity in the male urinary tract known as Benign Prostatic Hyperplasia (“BPH”). BPH involves hyperplasia (an increase in the number of cells) of certain cells in the prostate gland that surrounds the urethra. This may lead to deformation of the urethra and an increased resistance to the flow of urine from the bladder, which slows the urination process and, in some cases, causes pain.

The Product corrects this deformation with permanent adjustable transprostatic implants placed by a health care provider during a cystourethroscopy. Each permanent adjustable transprostatic implant is sold to hospital or medical facilities in its own sterile, individual housing, which is designed to couple to a urethroscope. The housing is single use; it is not reloadable or reusable.

The housing includes a handle for positioning the implant and coupling it to the urethroscope, a retractable needle for puncturing the capsule of the prostate gland, and a tensioning spring with the handle for allowing adjustment of the implant during placement. The transprostatic implant is a permanent implant made up of standard surgical implantable materials: a nitinol capsular tab, a stainless steel urethral tab, and polyester suture that connects the two tabs. Together, the permanent adjustable transprostatic implant and its housing form the Product.

The Product is sold to hospitals and medical facilities to correct a physical deformity and must be prescribed by a physician. The implant and its housing are sold together as an indivisible unit. The urethroscope is sold separately and is not included in the Product. The Food and Drug Administration approved the implant and housing to be used together as an indivisible unit.

Analysis

Retail sales of tangible personal property, except where otherwise exempted or excluded, and certain enumerated services are subject to sales tax. *See* Tax Law § 1105(a) (c). As relevant here, Tax Law § 1115(a)(4) exempts prosthetic aids and their component parts from the tax imposed by Tax Law § 1105(a) to the extent that they are purchased to correct or alleviate physical incapacity in human beings. Sales Tax Regulation 20 NYCRR 528.5(b)(1) qualifies what is considered to be prosthetic aids:

[t]he 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.

The Product is used for the treatment of a permanently malfunctioning male urinary tract caused by BPH. The Product is implanted permanently into the male urinary tract to partially replace the function of the urethra. Accordingly, the Product and the associated component parts (the permanent adjustable transprostatic implant and its housing) are prosthetic aids and are not subject to tax. *See* Tax Law § 1115(a)(4); 20 NYCRR 528.5; TSB-A-09(16)S (skin matrix product that replaces the patient's skin or the function of the skin held to be a prosthetic aid); TSB-A-14(11)S (indivisible component parts sold for a single price and not sold separately both qualify as part of the same prosthetic aid).

Finally, provided Petitioner clearly identifies any and all replacement parts for the Product as such, they will be exempt from sales tax. *See* 20 NYCRR 528.5(c)(1).

DATED: July 26, 2017

/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.