New York State Department of Taxation and Finance
Office of Counsel

TSB-A-20(68)S
Sales Tax
November 24, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [redacted]. Petitioner asks: (i) whether its [redacted] system—comprised of a spinal cord stimulator device, a wireless remote, and charger—is exempt from sales tax as a prosthetic device or medical equipment; and (ii) whether its spinal cord trial stimulator device is exempt from sales tax as a prosthetic device or medical equipment. We conclude that Petitioner's products do not qualify as exempt prosthetic aids and, while the products qualify as medical equipment, purchases of the product by medical service providers for compensation are not exempt purchases of medical equipment.

Facts

Petitioner's [redacted] system ("System") is a type of spinal cord stimulator that is designed to be a long-term solution for persons who have permanent chronic pain due to an injury or other disorder. The System consists of the [redacted] implant ("Implant"), a wireless remote, a charger and charger components. Petitioner submits that the Implant inhibits pain by emitting a high frequency pulse, thereby allowing the user to move more freely and use affected musculoskeletal areas in a way that is not possible without the System. The System is indicated as an aid in the management of chronic pain of the trunk and/or limbs, including pain associated with failed back surgery syndrome, intractable low back pain, and leg pain. It operates to interrupt pain receptors by delivering electrical energy to the spinal cord through a high frequency pulse.

Purchasers of the System include physicians, hospitals, and pain clinics. The Implant must be surgically installed by a doctor and the System may not be purchased at retail by a patient separate from the surgical procedure. The Implant is surgically installed in the patient's spinal cord above the injured or affected area. The patient uses the wireless remote to turn the stimulation on or off and control the stimulation strength. The Implant runs on battery power and is recharged through the patient's skin. To recharge, the patient places the charger in a holster and attaches it to a charger belt. The patient positions the belt to align the charger with the Implant. The belt can be placed over a thin layer of clothing. The charger itself is recharged using a separate power adapter. The wireless remote and charger are designed solely for use with the Implant and have no other functionality or purpose.

Before receiving the Implant, a doctor may first provide the patient with a trial stimulator device to determine how well the Implant might work for the patient. Petitioner offers the trial device solely to evaluate whether the Implant is right for a patient and not for long-term use. The trial device uses the same technology as the Implant, but it is a temporary device that externally adheres to the spine. A doctor implants thin insulated wires, known as "leads" near

the spine and the leads attach to the device. The patient will use the trial device for a test period of typically 5 to 7 days and then return the device to their doctor. The trial device is reused and not sold for individual use on each patient. For purposes of this Advisory Opinion, references to the System does include the trial device.

Analysis

Tax Law § 1105(a) imposes sales tax on the retail sale, except for resale, of tangible personal property. As relevant here, Tax Law § 1115(a)(4) exempts purchases of prosthetic aids and artificial devices ("prosthetic devices"), as well as their component parts, from the tax imposed by Tax Law § 1105(a). Tax Law § 1115(a)(3) exempts purchases of medical equipment and their component parts, and supplies, that are required for use in the cure, mitigation, treatment or prevention of illness or disease, or the correction or alleviation of physical incapacity, from the tax imposed by Tax Law § 1105(a). However, the Tax Law §1115(a)(3) exemption for medical equipment does not include purchases of medical equipment and supplies for use in performing medical services for compensation. *See* Tax Law § 1115(a)(3); 20 NYCRR 528.4(a); *see also, e.g.,* TSB-A-09(16)S.

The function of a device is key in determining whether it should be classified as medical equipment or as a prosthetic device. *See* TSB-A-01(5)S. To qualify as a prosthetic device, the property must: (i) completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part; (ii) be primarily and customarily used for such purposes; and (iii) not be generally useful in the absence of illness, injury or physical incapacity. *See* 20 NYCRR 528.5(b)(l). Petitioner's Implant is installed into a patient's spinal cord and it functions to inhibit pain through electrical energy or pulses. The Implant does not replace a missing body part or perform the function of a permanently inoperative or permanently malfunctioning body part. Rather, the System is intended to block or control pain that would otherwise naturally occur in the patient.

The Department has previously ruled that certain products would qualify as prosthetic devices in circumstances where they replace all or part of an inoperative or malfunctioning body part. *See, e.g.*, TSB-A-17(11)S (product implanted permanently into the male urinary tract partially replaces function of the urethra); TSB-A-12(5)S (implantable or paracorporeal cardiac device replaces function of a malfunctioning human heart); TSB-A-09(16)S (skin matrix product replaces function of the skin); and TSB-A-01(5)S (ventilator replaces function of permanently malfunctioning lungs or respiratory system).

Petitioner submits that the System is used to deliver a pain relief treatment through variable frequency emissions within the spine. The System cannot be said to replace a function of an inoperative or malfunctioning part of the body (*e.g.*, the nervous system). The product actually operates to block the transmission of pain, a natural response to a bodily injury and thus impedes a normal function of the nervous system. Thus, the System does not qualify as an exempt prosthetic aid.

Instead, Petitioner's System is considered medical equipment because the Implant mitigates and alleviates physical incapacity (pain); and the wireless remote and charger are designed specifically for use with the Implant and have no other functionality or purpose. Petitioner maintains that purchasers of the System are medical service providers, such as physicians, hospitals, and pain clinics. Because the exemption for medical equipment does not extend to purchases for use in performing medical services for compensation, such purchases of the System are not exempt purchases of medical equipment. *See* Tax Law § 1115(a)(3). Petitioner must collect tax on sales of the System to medical service providers for compensation.

We note that sales of the System to a qualified tax-exempt organization under Tax Law § 1116(a) that provides medical services for compensation, such as a not-for-profit hospital, would be exempt from sales tax. *See* TSB-A-17(22)S. Petitioner's records for each sale to an exempt organization should include a copy of Petitioner's invoice listing the exempt organization as the purchaser and a copy of Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, completed by the organization.

DATED: November 24, 2020

/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.