

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81 (16) S
Sales Tax
September 1, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810527C

On May 27, 1981 a Petition for Advisory Opinion was received from Nichols Oxygen Service, Inc., Rte. 9G, R.D. 1 #499, Hyde Park, New York 12538.

The issue raised is whether sales tax is required to be collected on the rental of regulators, humidifiers, ring stands and carts required to dispense medical oxygen to private patients in their homes.

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1101(b)(5) of the Tax Law defines the terms "sale, selling or purchase" to include rentals. However, Section 1115(a)(3) of the Tax Law exempts from tax certain ". . . medical equipment (including component parts thereof) and supplies"

The Sales and Use Tax Regulations provide that exempt medical equipment includes "(1). . . machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eyeglasses and artificial devices which qualify for exemption under section 1115(a)(4) of the Tax Law), which 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. (2) To qualify such equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury or physical incapacity. . . . (4) Medical equipment is not exempt if purchased by a person performing medical or similar services for compensation. . . ." 20 NYCRR 528.4(e).

The regulators, humidifiers, ring stands and carts rented by Petitioner to private patients for use in dispensing oxygen for medical purposes constitute medical equipment which is exempt from sales tax pursuant to the provisions of section 1115(a)(3) of the Tax Law. Therefore, Petitioner is not required to collect sales tax on the rental of this equipment to persons who are not performing medical services for compensation.

DATED: August 14, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau