

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

TSB-A-94 (32)S  
Sales Tax  
July 27, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940418C

S940418D

S940418E

On April 18, 1994 Petitions for Advisory Opinion were received from Cardio Systems Manufacturing, Inc., 1201 Interstate 35 North, Carrollton, Texas 75006, Cardio Systems North America Dealer Corporation, Inc., 1201 Interstate 35 North, Carrollton, Texas 75006 and Cardio System Sales, Inc., 1201 Interstate 35 North, Carrollton, Texas 75006.

The issue raised by Petitioners, Cardio Systems Manufacturing, Inc., Cardio Systems North America Dealer Corporation, Inc. and Cardio System Sales, Inc., is whether or not receipts from the sales, rentals or leases of Pneu-Care and Cardio System series of products consisting of hospital beds, mattresses, and mattress overlays, for use as described below, and future products and modifications with the same or similar function, including parts for repair and upkeep of these products, qualify for the exemption from sales tax provided under Section 1115(a)(3) of the Tax Law.

The products at issue, which consist of Pneu-Care Pro 2000; Pneu-Care Plus+ and Pneu-Care Plus - Kinetic Series; Pneu-Care Dynamic ICU; Pneu-Care Pulse; Pneu-Care RT 2000 (with SC Mattress or Turning Overlay and Theraderm Comforter); Pneu-Care Model 600 ASTA frame and mattress combination (with size variations such as Pneu-Care Pediatric); Pneu-Care Comfort Care Rx Air Support Therapy; and Cardio Systems ICU Critical Care Bed, are air support therapy units which are used by and in hospitals, and under the care of registered nurses for home patients, exclusively on a prescription by a physician basis. The air support therapy units are primarily available on a rental basis rather than sale, although occasional sales do occur. With the exception of sales directly to hospitals, all transactions are under a doctor's prescription.

The air support therapy units are used to alleviate the malfunction of parts of the body. Specifically, the products are all designed in connection with alleviation and treatment of skin ulceration caused by long-term bed care. In the case of long-term patient care, skin ulceration proceeds to involve muscle and bone damage, necrosis of bone, and damage to muscle, bone and supporting structures. The ulceration described is caused by a malfunction of the capillaries in and adjacent to the skin and in the supporting structures, caused by the long-term confinement to bed care in the long-term patient.

Section 1115 of the Tax Law states in part:

Exemptions from sales and use taxes.-(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(3) Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, ... but not including ... medical equipment (including component parts thereof) and supplies, ... purchased at retail for use in performing medical and similar services for compensation.

(g) Services otherwise taxable under paragraph (3) of subdivision (c) of section eleven hundred five shall be exempt from tax (1) if performed upon ... medical equipment when receipts from the retail sale of such items are exempt from tax under the provisions of paragraphs three and four of subdivision (a) of this section....

Section 528.4 of the Sales and Use Tax Regulations states in part:

Drugs and medicines; medical equipment and supplies. [Tax Law, 1115(a) (3) and (g)]

(a) Exemption. (1) Drugs and medicines intended for use ... in the cure mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity ... are exempt.

(2) Services performed upon exempt medical equipment are also exempt.

(e) Medical equipment. (1) Medical equipment means 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.

Example 1: Items such as hospital beds ... are medical equipment.

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The products, which are enumerated above, are all intended for use in the cure, mitigation or treatment of illness and are not generally useful in the absence of illness, injury or physical incapacity. Accordingly, the products enumerated above, including parts for use in repair and upkeep of such products, and currently being offered for sale, rental or lease by Petitioners qualify as medical equipment for purposes of the exemptions provided under Sections 1115(a) (3) and (g) of the Tax Law and Sections 528.4 (a)(2) and (e)(2) of the Sales and Use Tax Regulations.

It is noted that the sales tax status of any future products or modifications to existing products cannot be determined within the scope of this Advisory Opinion. A description of any future products or modifications to existing products and the use of such items must be submitted for review before a ruling on the sales taxability of such items can be issued.

DATED: July 27, 1994

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.