

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

TSB-A-95 (9)S  
Sales Tax  
April 10, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940727A

On July 27, 1994, a Petition for Advisory Opinion was received from Hair Club for Men of Albany, Ltd., One Washington Square, Albany, New York 12205.

The issue raised by Petitioner, Hair Club For Men of Albany, Ltd., is whether its hair replacement system, is exempt from sales tax as a prosthetic device.

Some of Petitioner's clients lose their hair as a direct result of Male Pattern Baldness. Petitioner states that this condition is irreversible and will lead to total baldness and it may create psychological problems that accompany baldness.

Petitioner has an in-depth technical method of giving hair back to its clients. The procedure entails preparing a flesh tone mesh grid with human hair tied into the grid. A foundation is woven or polyfused into the clients' existing hairlines using translucent nylon filaments or a breathing, liquid polymer. The mesh grid is then attached to the foundation by a licensed technician. The clients must return to the office for treatment and servicing of the hair prosthesis every six to eight weeks. These return visits continue as long as the clients wish to keep their hair, and can only be done by Petitioner's professionally trained technicians.

Section 1105 of the Tax Law provides, in part, as follows:

Sec. 1105. Imposition of sales tax.... there is hereby imposed and there shall be paid a tax ... upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

\* \* \*

(c) The receipts from every sale, except for resale, of the following services:

\* \* \*

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith...

Section 1115(a) of the Tax Law provides, in pertinent part, as follows:

Sec. 1115. 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 under section eleven hundred ten:

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(4) Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings.

Section 528.5 of the Sales and Use Tax Regulations provides, in part, as follows:

Reg. Sec. 528.5. Prosthetic aids -- (Tax Law Secs. 1115(a)(4), 1115(g)).  
(a) Exemption. Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof, purchased to correct or alleviate physical incapacity in human beings are exempt from the tax.

(b) Qualifications. (1) In order to qualify as a prosthetic aid, a hearing aid, eyeglasses or an artificial device, the property must 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. (emphasis added)

In Allen Arthur Co., Inc., Dec St Tx Comm, October 6, 1978, TSB-H-78(60)S, the Tax Commission held that activities in the fitting and "fusion" of a hairpiece, incorporated into the customer's natural hair, constituted the installing of tangible personal property within the intent and meaning of Section 1105(c)(3) of the Tax Law and thus, the Petitioner was required to collect sales tax with respect to such activities. In addition, the Tax Commission held that the activities of applicant with respect to the styling of the customer's hair with the hairpiece in place constituted the maintaining or servicing of tangible personal property within the intent and meaning of Section 1105(c)(3) of the Tax Law and thus, such activities were subject to sales tax.

Moreover, Taxable Status of Medical Equipment and Supplies, Prosthetic Devices and Related Items, Publication 822 (7/87) at page 2, provides that "hair prostheses" are exempt to all if the prosthesis is to be used as a result of a medical problem. However, since hair prosthesis may be used for cosmetic purposes which do not relate to medical problems, sales tax must be paid when it is purchased and an application for a refund of the tax paid must be submitted to support the medical problem. Form AU-11, Application for Credit or Refund, when filed, must be accompanied by a statement from the attending physician describing the specific medical problem which resulted in the need for a prosthesis.

Pursuant to Section 528.5(b) of the Sales and Use Tax Regulations, in order to qualify as a prosthetic aid, a hair prosthesis must completely or partially replace a missing body part or the

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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. Moreover, pursuant to Publication 822, supra, the purchase of a hair prosthesis is exempt from sales tax where it is demonstrated that such prosthesis is to be used as a result of a medical problem and not for cosmetic purposes. In Allen Arthur Co., Inc., supra, it was held that the fitting and fusion of a hairpiece, incorporated into the customer's natural hair, constituted the installation of tangible personal property and not use of a prosthetic aid, and therefore, the purchase and installation of the hairpiece was held to be subject to sales tax pursuant to Section 1105(c) of the Tax Law. Accordingly, the purchase of a hair prosthesis is exempt only under Section 1115(a)(4) of the Tax Law where it is demonstrated that the prosthesis is to be used as a result of a medical problem.

A determination in the instant case as to whether Petitioner's clients are purchasing a hair prosthesis as a result of medical problems and not for cosmetic purposes is a factual question which cannot be determined in an Advisory Opinion. An Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to a "specified set of facts." Tax Law, Section 171, subd. twenty-fourth; 20 NYCRR 23716.1(a). Such determination can be made, however, by customers filing Form AU-11, Application for Credit or Refund, accompanied by a statement from the attending physician describing the specific medical problem which resulted in the need for a prosthesis.

DATED: April 10, 1995

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

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