

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

TSB-A-98(53)S
Sales Tax
August 6, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S971210C

On December 10, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Cobe Laboratories, Inc., 1185 Oak Street, Lakewood, CO 80215-4407. Petitioner, Cobe Laboratories, Inc., provided additional information pertaining to the petition on May 20, 1998 and July 20, 1998.

The issue raised by Petitioner is whether dialysis machines, artificial kidneys and component tubing/connectors (blood lines) used in conjunction with the hemodialysis regimen are prosthetic devices which are exempt from sales and compensating use tax under Section 1115(a)(4) of the Tax Law.

Petitioner sells hemodialysis machines, artificial kidneys and related tubing/connectors used in the dialysis process to hospitals and dialysis clinics located within New York State.

A person afflicted with kidney failure must undergo dialysis treatment (filtration of his/her blood) every two to three days so that the toxic substances that accumulate from metabolism, which the kidney normally gets rid of, are removed from the body. Dialysis treatment is not used unless an individual has diseased kidneys which no longer function properly or at all. The artificial kidney replaces the filtering function of the human kidney during dialysis treatment by the use of a membrane which allows the waste products to be pulled out of the blood. The dialysis machine provides the power to pump the person's blood through the artificial kidney and, after cleansing, back into the body. The blood is transported to and from the body through disposable tubing which comes with a pre-attached connector for connection to the dialysis machine and is specifically used for hemodialysis. Each artificial kidney is also used a single time and then disposed of or it can be cleansed and reused on the same individual (primarily in home care situations).

Applicable Law and Regulations

Section 1105(a) of the Tax Law imposes a tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1115(a) of the Tax Law, as amended September 1, 1976, exempts from the sales tax imposed by Section 1105(a) of the Tax Law and from the compensating use tax imposed under Section 1110:

* * *

(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, and products consumed by humans for the preservation of health but not including ... medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

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

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

* * *

(g) *Supplies.* (1) Supplies used in the cure, mitigation, treatment or prevention of illnesses or diseases or for the correction and alleviation of physical incapacity are exempt.

* * *

(2) Medical supplies are not exempt if purchased by a person performing medical or similar services for compensation. . . .

(h) *Taxable medical equipment and supplies.* (1) Medical equipment and supplies purchased for use in performing medical or similar services for compensation are not exempt from tax.

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

(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 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.

* * *

(c) *Replacement parts.* (1) Replacement parts for prosthetic aids, hearing aids, eyeglasses and artificial devices must be identifiable as such at the time the retail sale is made. . . .

(2) Supplies used in conjunction with prosthetic aids, hearing aids, eyeglasses and artificial devices are not exempt from the tax.

TSB-A-98(53)S
Sales Tax
August 6, 1998

Opinion

Petitioner sells dialysis machines, artificial kidneys and related disposable tubing/connectors (blood lines) used in conjunction with the hemodialysis regimen to hospitals and dialysis clinics located within New York State. It is the function of each item that is key in determining whether they should be classified as prosthetic devices which are exempt from sales tax pursuant to Section 1115(a)(4) of the Tax Law, or as medical equipment or supplies which are taxable when purchased at retail for use in the performance of medical or similar services for compensation pursuant to Section 1115(a)(3) of the Tax Law (see Microvasive, Inc., Adv Op Comm T&F, March 28, 1989, TSB-A-89(9)S).

The function of the dialysis machine is to pump the blood through the artificial kidney for purification and propel the cleansed blood back to the patient. The function of the artificial kidney is to replace the life-sustaining filtration function of the human kidney in the case of injury or physical illness. The artificial kidney cannot perform its function without the pumping action of the dialysis machine. The tubing, which comes with a pre-attached connector for connection to the dialysis machine, transports the blood to and from the body and is essential to the dialysis process. This hemodialysis regimen replaces the function of a failed, vital body part as required by Section 528.5(b)(1) of the Sales and Use Tax Regulations. It is not used unless an individual has diseased kidneys which no longer function properly or at all. Accordingly, it is the Department's position that, as presented by Petitioner, dialysis machines, artificial kidneys and component tubing/connectors used in the prosthetic process qualify as prosthetic aids under Section 1115(a)(4) of the Tax Law. Therefore, the receipts from Petitioner's sales of dialysis machines, artificial kidneys and tubing/connectors used in hemodialysis are exempt from sales and use taxes pursuant to Section 1115(a)(4) of the Tax Law whether or not such devices are purchased for use in performing medical or similar services for compensation.

DATED: August 6, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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