

**New York State Department of Taxation and Finance  
Office of Tax Policy Analysis  
Technical Services Division**

TSB-A-05(14)S  
Sales Tax  
April 27, 2005

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S040211A

On February 11, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from Pulse Data Humanware, Inc., 175 Mason Circle, Concord, CA 94520.

The issue raised by Petitioner, Pulse Data Humanware, Inc., is whether the equipment it sells to visually impaired people in New York is exempt from sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner sells equipment for use by visually impaired individuals who are totally blind or who have limited vision and may be considered legally blind. Products include the “Smartview” magnifier, “BrailleNote” and “VoiceNote” with keyboard options, “ScannaR” and related software, as well as Braille displays, writers, embossers, and translators. These products are sold either for home use to users who are partially sighted or blind, or to government entities, welfare agencies, libraries, schools, and rehabilitation organizations providing services to individuals with such disabilities. Petitioner provided a copy of its sales brochure as part of its request for an Advisory Opinion. The following descriptions of Petitioner’s products are derived from the information presented in the sales brochure.

**Video Magnifiers** – The Smartview products are video magnifiers that have been designed for comfort and ease of use. Essentially, the magnifiers are stand alone units comprised of a reading table, projector, and monitor. Reading materials are placed on the reading table where they are magnified and projected onto the monitor. Magnification ranges from 2 to 60 times the original size. The reading table is designed so that the user can slide the reading materials in any direction, making it easy to view any object. The depth of the reading table allows users to view anything from a photograph to a thick telephone book. All controls are located on the front panel and have been designed to be user friendly. The Smartview 8000 is sold with a Smart Keypad and Smart PC Access kit. The Smart Keypad provides large onscreen display of text from the Smartview 8000 and the “lines and blinds” features enhance viewing by superimposing adjustable line markers onto the monitor screen and highlighting a single column or line. The Smart PC Access kit enables variable horizontal and vertical split screen capability as well as views of the full screen SmartView monitor and a full screen PC monitor. This eliminates the need for two monitors to view magnified and/or computer materials.

**PocketViewer** – The PocketViewer is a portable magnifying device which essentially takes a picture of the text to be read and magnifies the text up to 7 times the original size. The device’s full color picture quality allows a user to read maps, illustrations, text on three

dimensional objects such as product labels or price tags, and magazines and books. Enhanced contrast modes (white/black or black/white) can be selected for clear and easy reading.

**Braille/Voice Equipment** – The BrailleNote Family of products are electronic devices which allow blind or sight impaired individuals to enter and store information for later retrieval. BrailleNote BT features a nine-key Braille keyboard ergonomically styled for user comfort while entering such information. A one-handed mode is included for people with limited hand use for data entry. Blind or sight impaired individuals can choose to retrieve the information through either a Braille display or speech voice output. BrailleNote QT is for those who want the choice of Braille or speech output, but prefer a computer style keyboard. It also has a Braille input mode. The VoiceNote products function in the same manner as the BrailleNote products, but they provide only speech output.

**Global Positioning Systems** – BrailleNote GPS uses Global Positioning System satellites to receive information about its position and nearby points of interest, using a receiver about the size of a mobile phone that plugs into the BrailleNote or VoiceNote device. The pertinent information received from the GPS satellites regarding the impaired individual's physical location is translated and sent either to the Braille display or speech output of the BrailleNote or VoiceNote device.

The receiver appears to be similar to other GPS devices offered for sale to the general public, but it cannot function independently from the BrailleNote or VoiceNote device due to its specialized computer programs. The receiver enables personalized travel routes and favorite spots to be easily programmed into the BrailleNote or VoiceNote device, as well as thousands of points of interest available with the system.

**Scanning Equipment** – ScannaR is a compact flat-bed scanner that will automatically scan text, then read it aloud. ScannaR can generally be used to scan any text material, and its use is not limited to specific texts. While the ScannaR is generally a stand-alone piece of equipment, it can be used to capture print materials for the BrailleNote or VoiceNote device by transferring the saved file to a PC.

**Related Software** – BrailleNote and VoiceNote products have been developed specifically to meet the needs of people who are blind. The various proprietary software programs which allow this equipment to operate are developed specifically to function with such specialized equipment. The software is not compatible or functional with any other computer equipment. In addition to its specialized operating software, every BrailleNote and VoiceNote model now has the following user friendly software functions: word processor, e-mail, daily planner, book reader, Web browser, visual display, contact lists, scientific calculator, and on-line help. While such software functions appear to be generic in nature, the software is programmed specifically for the BrailleNote and VoiceNote hardware and operating systems to produce Braille or voice outputs and cannot be utilized by other computer equipment.

**Applicable law and regulations**

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

\* \* \*

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

\* \* \*

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

(6) Tangible personal property. Corporeal personal property of any nature. . . . Such term shall also include pre-written computer software, whether sold as part of a package, as a separate component, or otherwise, and regardless of the medium by means of which such software is conveyed to a purchaser. . . .

\* \* \*

(14) Pre-written computer software. Computer software (including pre-written upgrades thereof) which is not software designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more pre-written computer software programs or pre-written portions thereof does not cause the combination to be other than pre-written computer software. Pre-written software also includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such

purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, such person shall be deemed to be the author or creator only of such person's modifications or enhancements. Pre-written software or a pre-written portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains pre-written software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute pre-written computer software.

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.

Section 1115 of the Tax Law provides, in part:

(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:

\* \* \*

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

\* \* \*

(g) Services otherwise taxable under paragraph (3) of subdivision (c) of section eleven hundred five shall be exempt from tax (1) if performed upon prosthetic aids, hearing aids, eyeglasses, artificial devices or 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 528.5 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.*  
(Emphasis added)

\* \* \*

Example 5: Sound amplification devices for hard-of-hearing people used with telephones or television sets are exempt.

Example 6: Specialized equipment used by the hearing impaired that converts teletype signals into telephone signals and telephone signals into teletype signals and thus enables a hearing impaired person to communicate by telephone, are exempt.

\* \* \*

Example 9: Braille typewriters are exempt.

Example 10: A device (commonly known as an Optical Tactile Converter) which converts standard printing into various impulses that represent alphabetic and numeric characters which a blind person can feel with his hand and thereby read standard print is exempt.

Example 11: Devices for installation of TV sets for receiving closed captioned programs are exempt.

(2) Parts, special attachments, special lettering, etc., that are added to or attached to tangible personal property, such as appliances, so that a handicapped person can use them are exempt. If tangible personal property is sold with special controls, lettering or devices, and the additional charge for the added features is separately stated on the bill for the tangible personal property, that portion of the sales receipts attributable to the added features is exempt. In determining whether the extra amount charged for the special controls, lettering or devices is reasonable, like items exclusive of the added features should be compared with the same item with the added features.

\* \* \*

Example 15: That portion of the price of braille books and braille games which is attributable to those features of the books and games that enable the affected person to use them, if separately stated on the bill, is excluded from the amount upon which the sales tax is computed. In determining the reasonableness of the amount of the exclusion, like items must be compared, such as, a

comparison of the price of a hard cover braille edition of a book with the same hard cover edition of a nonbraille book.

Example 16: Calculators which contain talking devices that are intended for the use of blind people are subject to tax. However, that portion of the price of the calculator attributable to the talking device is exempt from tax, if separately stated on the bill for the calculator.

## **Opinion**

Petitioner sells equipment for visually impaired individuals who are totally blind or who have limited vision and may be considered legally blind. This equipment is sold to users who are partially sighted or blind for home use, or to government entities, welfare agencies, libraries, schools and rehabilitation organizations providing services to individuals with such disabilities.

Essentially, these devices allow visually impaired individuals to “read” printed materials. For those with limited vision, materials are magnified. For those who are blind, these devices can “read aloud” electronic files, e-mails, Web pages, etc., as well as printed materials. They also allow data capture through a regular keyboard configuration, or a Braille keyboard configuration.

A sales tax exemption is provided for prosthetic aids and artificial devices which are purchased to correct or alleviate physical incapacity in human beings. See section 1115(a)(4) of the Tax Law. Prosthetic devices must completely or partially replace a missing body part or the function of a permanently inoperative or malfunctioning body part, must be primarily and customarily used for such purposes, and must not be generally useful in the absence of illness, injury or physical incapacity. See section 528.5(b)(1) of the Sales and Use Tax Regulations.

Petitioner’s equipment appears to replace the function of permanently inoperative or malfunctioning human eyes. Similar to eyeglasses, Petitioner’s Smartview series of magnifying devices allow individuals with extremely limited vision to read any printed material. The BrailleNote (including BrailleNote GPS), VoiceNote, and ScannaR products replace the function of the human eye for those who are blind by providing a Braille display or reading aloud the content of the printed material. These products are primarily and customarily used by persons with severe visual impairment and appear to meet the qualifications of prosthetic devices pursuant to section 1115(a)(4) of the Tax Law. See *Audio Reading Concepts*, Adv Op Comm T&F, January 25, 1995, TSB-A-95(4)S.

Since the BrailleNote and VoiceNote related software is not compatible or functional with any other computer equipment and Petitioner does not offer or sell these software programs without the equipment, such related software is a component part of the BrailleNote or VoiceNote device and, therefore, exempt under section 1115(a)(4) of the Tax Law.

TSB-A-05(14)S  
Sales Tax  
April 27, 2005

Petitioner's products qualify as prosthetic aids pursuant to section 1115(a)(4) of the Tax Law, and are not subject to sales tax when sold by Petitioner to individuals with impairments or government entities, welfare agencies, libraries, schools and rehabilitative organizations providing services to individuals with such disabilities.

DATED: April 27, 2005

/s/  
Jonathan Pessen  
Tax Regulations Specialist IV  
Technical Services Division

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