

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

TSB-A-06(13)S  
Sales Tax  
April 11, 2006

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S050930A

On September 30, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from Moore Medical LLC, P. O. Box 1500, 389 John Downey Drive, New Britain, Connecticut, 06050. Petitioner, Moore Medical LLC, provided additional information pertaining to the Petition on November 9, 2005.

The issue raised by Petitioner is whether it is required to collect sales tax on its sales of alcohol prep swabs, iodine prep swabs and antiseptic towelettes when sold by Petitioner to persons using these items to provide medical or similar services for compensation.

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

Petitioner is a specialty direct marketer and distributor of medical, surgical and pharmaceutical products to healthcare practices and facilities in non-hospital settings, including physicians' offices, emergency medical services, schools, correctional institutions, municipalities, occupational healthcare offices and other specialty practice communities. Petitioner sells alcohol prep swabs, iodine prep swabs and antiseptic towelettes for use by healthcare practitioners in performance of their medical services. The alcohol and iodine prep swabs are used on patients to sterilize injection sites, while the antiseptic towelettes are used to sterilize or disinfect medical equipment and supplies; to wash, disinfect and cleanse practitioners' hands; and to otherwise prevent infection resulting from medical procedures.

**Applicable law and regulations**

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax. On and after June first, nineteen hundred seventy-one, 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.

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

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, and products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or 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.

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

Drugs and medicines; medical equipment and supplies. (a) Exemption. (1) Drugs and medicines intended for the 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 are exempt.

\* \* \*

(b) *Drugs and medicines*. (1) *Drugs and medicines* mean:

(i) articles, whether or not a prescription is required for purchase, which are recognized as drugs or medicines in the *United States Pharmacopeia*, *Homeopathic Pharmacopeia of the United States*, or *National Formulary*, and intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans;

(ii) articles (other than food) intended to affect the structure or any function of the human body.

(2) The base or vehicle used (oil, ointment, talc, etc.) and the medium used for delivery (disposable wipe, syringe, saturated pad, etc.) of a drug or medicine will not affect its exempt status.

(3) Products consumed by humans for the preservation of health include other substances used internally or externally, which are not ordinarily considered drugs or medicines.

Example 1: Analgesics, antiseptics, antacids, cough and cold remedies, laxatives, aspirin, boric acid ointment, cod liver oil and castor oil are exempt.

\* \* \*

Example 3: Insulin that is packaged with disposable syringes is 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, wheel chairs . . . iron lungs, respirators, oxygen tents, crutches, back and neck braces, trusses, trapeze bars, walkers, inhalators, nebulizers and traction equipment are exempt medical equipment.

\* \* \*

(4) Medical equipment is not exempt if purchased by a person performing medical or similar services for compensation. (See subdivision (g) of this section.)

\* \* \*

(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.

Example 1: Colostomy bags and the necessary accoutrements required for attachment are medical supplies.

Example 2: Bandages, gauze and dressings are medical supplies.

Example 3: Disposable hypodermic syringes and litmus paper used by diabetics are medical supplies.

(2) Medical supplies are not exempt if purchased by a person performing medical or similar services for compensation. (See subdivision (h) of this section.)

(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.

Example 1: Stethoscopes, syringes, wheel chairs, etc. purchased by physicians are not exempt.

\* \* \*

Example 3: Bandages, gauze, dressings, etc., are not exempt when purchased by a physician, ambulance service or other person who will use them in performing a medical service for compensation.

## Opinion

Section 1115(a)(3) of the Tax Law provides an exemption from the sales tax imposed by section 1105(a) of the Tax Law for purchases of drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illness or disease in human beings. Medical iodine, alcohol, and other antiseptics are considered to be exempt drugs and medicines when sold in sterile packaging for use internally or externally to prevent illness or disease in human beings as contemplated by section 1115(a)(3) of the Tax Law. See section 528.4(b)(3), Example 1, of the Regulations and Publication 840, entitled *A Guide To Sales Tax For Drugstores and Pharmacies* (8/98). Section 528.4(b)(2) of the Regulations states that the medium used for delivery (disposable wipe, syringe, saturated pad, etc.) of a drug or medicine will not affect its exempt status. Section 528.4 further distinguishes between exempt drugs and medicines and medical equipment and supplies by stating that insulin packaged with disposable syringes (presumably for use directly on patients) is exempt from sales and use tax as the purchase of a drug or medicine (see section 528.4[b][3], Example 3), but that disposable hypodermic syringes are taxable medical supplies when purchased by a person performing medical or similar services for compensation (see section 528.4[g] and [h]). Therefore, sales by Petitioner of the alcohol prep swabs and iodine prep swabs are purchases of drugs or medicines exempt from the sales and use tax because they are used on patients to sterilize injection sites.

However, sales by Petitioner of antiseptic towelettes are not drugs or medicines for use in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings as

TSB-A-06(13)S  
Sales Tax  
April 11, 2006

contemplated by section 1115(a)(3) of the Tax Law since they are used by Petitioner's customers to sterilize or disinfect medical equipment and supplies, to wash, disinfect and cleanse practitioners' hands or to otherwise prevent infection resulting from medical procedures. Therefore, Petitioner's sales of these items are subject to sales tax.

DATED: April 11, 2006

/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.