

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-12(1)S
Sales Tax
February 9, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110607A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether a substance known as Synvisc is subject to sales and use tax. We conclude that Synvisc is exempt from tax under Tax Law section 1115(a)(3) on the ground that it is a product consumed by humans for the preservation of health.

Facts

Synvisc® (hylan G-F 20) (“Synvisc”) is an elastoviscous high molecular weight fluid containing hylan A and hylan B polymers produced from chicken combs. Hylans are derivatives of hyaluronan (sodium hyaluronate). Hylan G-F 20 is unique in that the hyaluronan is chemically crosslinked. Hyaluronan is a long-chain polymer containing repeating disaccharide units of N-acetylglucuronate-Nacetylglucosamine.

Currently, patients suffering the pain of osteoarthritis can receive a therapeutic injection of Synvisc at a physician’s office and feel better. In knees with osteoarthritis, the joint fluid (called synovial fluid) can break down and not provide the cushioning the knee needs. Synvisc supplements the knee fluid to relieve the pain and improve the knee joint’s natural shock-absorbing abilities.

Synvisc is not recognized as a drug in the United States Pharmacopeia, Homeopathic Pharmacopeia of the United States, or National Formulary. The U.S. Food and Drug Administration (FDA) classifies Synvisc as a device.

Analysis

Section 1105(a) of the Tax Law imposes sales tax on the sale of tangible personal property. As pertinent here, section 1115(a)(3) of the Tax Law exempts from sales and use tax (1) drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, and (2) products consumed by humans for the preservation of health, but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein. When injected into the knee, Synvisc supplements the knee’s synovial fluid, thus improving the operation of the knee, and thereby maintaining the patient’s

mobility. Accordingly, Synvisc is a product consumed by humans for the preservation of health and is exempt under Tax Law section 1115(a)(3) (*see* 20 NYCRR § 528.4[b][3]).

DATED: February 9, 2012

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.