

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

TSB-A-14(33)S
Sales Tax
August 26, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140421A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the sale of test cards used in the diagnosis of eye disease is subject to sales and use tax when the cards are sold in New York State.

We conclude that the test cards qualify as medical equipment or supplies for purposes of Tax Law § 1115(a)(3). Therefore, sales of the test cards in New York will be taxable if sold to persons using the cards to provide medical services for compensation.

Facts

Petitioner sells equipment used to diagnose dry eye disease to eye care practitioners. It also sells osmolarity test cards, which are used to collect tear fluid from human eyes. The cards are individually packaged, non-sterile, polycarbonate microchips containing (a) a microfluidic channel used to collect nanoliters of tear fluid and (b) gold electrodes embedded in the card that enable measurement of impedance of the tear fluid sample. Cards work in conjunction with Petitioner's osmolarity system, which analyzes the tear samples. The cards are used only once and are discarded after the analysis is completed.

Analysis

Tax Law § 1115(a)(3) exempts from sales and use tax the retail sale of medical equipment (including component parts thereof) and supplies required for the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, but not including medical equipment and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation. While the test cards are either medical equipment or supplies used to diagnose a medical condition, and, thus, come within the scope of section 1115(a)(3), they are not exempt from sales and use tax when sold for use in performing medical and similar services for compensation.

Accordingly, Petitioner's sale of the cards to eye care practitioners will be subject to sales tax if they are used to provide medical services for compensation.

DATED: August 26, 2014

/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.