

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

TSB-A-14(8)S
Sales Tax
February 11, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130520A

This modifies an Advisory Opinion issued to Petitioner [REDACTED], dated November 1, 2010 (TSB-A-10(55)S) regarding the taxability of Petitioner's product, a copper-coated intra-uterine device (IUD), hereafter referred to as "Product." The purpose of this modification is to correct the original opinion to provide that the Product qualifies as a drug or medicine and is thus not subject to sales and use tax.

Facts

Petitioner [REDACTED] supplies drugs, medicines, medical equipment, and supplies to medical services providers and patients. Among the items that Petitioner manufactures and sells is Product. Because a physician's order is required for the purchase of Product, sales to both medical services providers and patients are shipped to physicians or medical facilities.

Petitioner represents that Product is a plastic T-shaped device that is wrapped in copper wire. Product's packaging has a federal warning label that restricts it to sale by, or on the order of, a physician. Product is inserted by a physician into the uterus of the patient. Product may remain implanted in the woman's uterus for up to 12 years. The function of the "copper-bearing" contraceptive device is to kill sperm. It releases copper ions, and copper is toxic to sperm. The copper-bearing contraceptive device interferes with fertilization and makes the uterus a "spermicidal environment." The copper adds to the effectiveness of the contraceptive device in other ways. It affects the lining of the uterus by not allowing an egg to implant. It also stimulates the production of prostaglandins, which are chemicals that affect the hormones needed to support a pregnancy.

The U.S. Food and Drug Administration (FDA) classifies Product as a drug with an active ingredient of copper. The FDA listing indicates that the "Dosage Form/Route" for Product is an intrauterine device. Product is listed in the Physician's Desk Reference, and copper is listed in the U.S. Pharmacopeia.

Analysis

Tax Law § 1105(a) imposes sales and use tax on the retail sale of tangible personal property. The Sales Tax Regulations treat "birth control pills" as qualifying for the "drugs and medicines" exemption in section 1115(a)(3). Product is analogous in function to birth control pills, its main ingredient, copper, is listed as a drug in the U.S. Pharmacopeia, and Product is

treated as a drug by the Federal Food and Drug Administration. Accordingly, Product qualifies as a drug or medicine and is thus not subject sales and use tax. *See* Tax Law § 1115[a][3]; 20 NYCRR § 528.4[b][1][i]; TSB-A-10[9]S).

DATED: February 11, 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.