

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-88 (51) S
Sales Tax
October 13, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880826C

On August 26, 1988, a Petition for Advisory Opinion was received from Robert C. Ferber, c/o PREVENT-WISE, INC., P.O. Box 909, Jackson Heights, New York 11372.

The issue raised is whether Petitioner's product is considered to be medical equipment or a prosthetic aid which would be exempt from sales tax pursuant to Section 1115(a)(3) or Section 1115(a)(4) of the Tax Law, respectively.

Petitioner invented HIP-GUARD, which is a protective body-worn appliance for the prevention of hip joint fractures and dislocations, especially in older persons. The device is intended to protect the wearer's hips in case of a fall onto a hard surface.

Section 1115(a)(3) of the Tax Law exempts from sales tax:

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....

Section 1115(a)(4) of the Tax Law exempts from sales tax:

Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings.

Section 528.4(e) of the Sales and Use Tax Regulations defines medical equipment as "machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eyeglasses and artificial devices...), 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". To qualify for exemption, equipment must be primarily and customarily used for medical purposes and cannot be generally useful in the absence of illness, injury or physical incapacity.

Protective devices do not qualify as medical equipment merely because they prevent injury in healthy individuals by absorbing the force caused by impact against hard surfaces. Thus, such protective devices as child car seats, football helmets and construction hard hats are all subject to sales tax notwithstanding their obvious usefulness in protecting their users from injury cause by impact against a hard surface.

Petitioner's devices do not qualify as medical equipment merely because they prevent injury in healthy individuals by absorbing the force of an impact against a hard surface. Thus, such protective devices as child car seats, football helmets and construction hard hats are all subject to sales tax notwithstanding their obvious usefulness in protecting their users from injury cause by impact against a hard surface.

Petitioner's device is intended to protect the wearer's hips from injury caused by the force of an impact against a hard surface. Its usefulness is limited to those individuals who have not yet suffered a hip joint fracture or dislocation. Thus, it is generally useful only in the absence of such an injury. Moreover, Petitioner's device is not intended for use in the cure, mitigation, treatment or prevention of illness or diseases. Petitioner's device is not intended for the correction or alleviation of physical incapacity in human beings. While Petitioner's device is a product used by humans for the preservation of health, it is not a product consumed by humans for the preservation of health since it is not ingested by humans. C. D. Lane, Determination of the State Tax Commission, TSB-H-79(62)S.

Therefore, Petitioner's device does not qualify as medical equipment within the meaning of section 1115(a)(3) of the Tax Law.

Additionally, section 528.5(b)(1) of the Sales and Use Tax Regulations states:

(1) In order to qualify as a prosthetic aid, ..., 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. 20 NYCRR 528.5(b).

Petitioner's device does not completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part.

Therefore, Petitioner's device does not qualify as a prosthetic aid within the meaning of section 1115(a)(4) of the Tax Law.

Accordingly, Petitioner's device does not qualify for exemption from sales tax pursuant to either Section 1115(a)(3) or Section 1115(a)(4) of the Tax Law.

DATED: October 13, 1988

s/FRANK J. PUCCIA
Director
Technical Services

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