

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

TSB-A-88 (53)S
Sales Tax
October 21, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880715A

On July 15, 1988, a Petition for Advisory Opinion was received from Joseph L. Ryerson, R.D. #2 Box 4, Holland Patent, New York 13354.

The issues raised are whether the sale of home drinking water test kits and water treatment system are subject to the New York State sales tax.

Petitioner urges that the sale by licensed pharmacists of home drinking water test kits should be exempted from sales and use tax. Petitioner states that the kits in question have been certified by the State of New York for use by New York residents in determining the level of lead contamination in their home drinking water due to contaminated water supplies or from lead pipes or lead pipe solder.

Petitioner also urges that home drinking water filtration systems installed to remove lead, chlorine related carcinogenic compounds and numerous additional organic and inorganic toxins should be similarly exempted from sales and use tax. It is noted that a brochure submitted as part of the Petition for Advisory Opinion describes the filtration system in question as "completely portable and quickly attaches to any ordinary faucet." The brochure also indicates that the system removes rust and scale from the water as well as the harmful substances included above.

Section 1105(a) of the Tax Law impose sales tax upon "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1115(a)(3) of the Tax Law exempts medical equipment and supplies from the tax imposed by section 1105(a) of the Tax Law.

Section 528.4(e) of the sales tax regulation defines medical equipment as:

(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.

Petitioner's test kits are not used in the "...cure, mitigation, treatment or prevention of illnesses or diseases..." Rather, the test kits are used to test drinking water in a variety of homes without regard to the medical condition of the tenant or resident of the house. Moreover, the test kit

neither cures, mitigates, treats or prevents illness or disease or corrects or alleviates physical incapacity in human beings.

Accordingly, the test kits are subject to the sales and use tax.

Petitioner's water filtration system is not primarily or customarily used for medical purposes. It is generally useful in the absence of illness, injury or physical incapacity.

The term "medical equipment" includes such things as hospital beds, wheel chairs, hemodialysis equipment, iron lungs, respirators, oxygen tents, crutches, back and neck braces, trusses, trapeze bars, walkers, inhalators, nebulizers, traction equipment, orthodontic devices and intrauterine birth control devices all of which are primarily or customarily used for medical purposes (See: 20 NYCRR 528.4(c)). However, this term does not include air conditioners or air purifiers due to the non-medical nature of such equipment. This is so even if air conditioners or air purifiers are purchased to alleviate an existing illness. Moreover, the water filtration system removes rust and scale and, thus, produces purer water even in the absence of lead, toxins and other harmful substances.

Accordingly, the water filtration system does not qualify as medical equipment and is, therefore, subject to sales and use tax.

DATED: October 21, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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