

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

TSB-A-97(17)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S960903A

On September 3, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Access Lifts & Ramps, Inc., 2590 W. Ridge Rd., Rochester, NY 14626. Petitioner, Access Lifts & Ramps, Inc., most recently provided additional information pertaining to the Petition on November 4, 1996.

The issue raised by Petitioner, Access Lifts & Ramps, Inc., is whether the purchase or installation of Garaventa Stair-porters, Garaventa Stair-tracs, Garaventa Evacu-tracs, CM Solutions Patient Lifts, Minivator Residential Elevators, Elevette Residential Elevators, Classique Elevators, Limited Use Limited Access Flexilifts or Inclinator Homewaiters for use by disabled individuals in residences and commercial buildings is subject to sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner sells and installs the following items.

The Garaventa Stair-porter is a freestanding versatile device, mounted on wheels and rubber tracks, that allows an attendant to easily transport a person who has mobility limitations up or down stairs. It may be used for everyday access where elevators are not available, or to provide emergency egress, up or down stairs, when elevators cannot be used. The passenger sits in a sling-seat and is secured by leg and torso restraints. The passenger and the Stair-porter are guided up (or down) the stairs by an attendant. Whether ascending or descending stairs, a motor ensures that the Stair-porter moves at a comfortable speed. The Stair-porter may be folded, and stored near stairs in a storage cabinet, mounted against the wall or recessed into it. The Stair-porter is key-operated for security.

The Garaventa Stair-trac is a portable wheelchair lift, mounted on rubber tracks and wheels, which attaches under most standard wheelchairs and allows an attendant to transport a person in a wheelchair up and down stairways. The Stair-Trac is motor-powered. The Stair-trac is also available with an optional ambulatory seat for carrying people who are not in wheelchairs but have mobility difficulties on stairs. The Stair-trac adapts to wheelchairs from adult to tot sizes, and can be used on indoor or outdoor stairways. It does not require installation or site modification. It is key-operated to prevent use by untrained or unauthorized persons.

The Garaventa Evacu-trac is designed for use during an emergency such as a fire or earthquake, when elevators cannot be used, to move injured people or people with disabilities down stairways quickly and safely. The Evacu-trac is a freestanding device mounted on rubber tracks and wheels. The Evacu-trac does not contain a motor, but uses the passenger's weight to propel the unit down stairs. The descent speed is limited by a built-in governor. On stairs, the Evacu-trac can be brought to a complete stop by releasing the hand brake. Leg and torso restraints hold the passenger firmly and securely in place.

The CM Solution Patient Lifts are power lift and transfer systems designed to lift patients and disabled persons in and out of beds, wheelchairs, bathtubs, pools, etc. The person sits in a sling while being lifted by the motorized system. The lift and transfer systems adapt to a wide range of specific needs. Standard or custom length overhead tracks are available with free standing fixed or adjustable height legs for floor support installation. The overhead tracks can also be attached to ceilings or walls.

The Minivator Residential Elevator has helped persons requiring wheelchairs and with other disabilities gain access throughout their two-level homes. The Minivator requires minimal construction to install. The elevator car rides on two steel guide rails mounted directly to a load bearing wall. The Minivator is able to travel up to sixteen feet and is equipped for two stops. The motor for the Minivator is housed at the top of the guide rails requiring no overhead clearance into the attic. No pit, machine room or hoistway is necessary like traditional elevators. However, a 53" x 33" opening between the floors must be constructed so that the elevator may pass through the opening for access to each floor. The standard car is 30" x 46".

The Elevette Residential Elevators are custom made in-shaft elevators that can be installed in residences to allow persons requiring wheelchairs and with other disabilities to gain access throughout their multi-level homes. It adapts easily to any preexisting space requirement. Handling weights of 500 or 750 lbs., the Elevette Residential Elevator can be fitted with up to three gates, permitting access to different floors from different sides of the elevator car. It operates on a monorail steel channel, with a cantilever suspension. In some cases, a minimum 9 inch pit and 8 foot overhead are required. When constructed in the largest size of 12 square feet, the Elevette can accommodate most wheelchair patients along with an attendant.

The Classique Residential Elevator is less costly than a traditional elevator and space efficient. It fits in a hoistway as small as 50" x 55" and requires only a 9 inch pit. Its design provides easy installation and maximum passenger security. The carriage mounted car travels on a vertical track. The independently mounted 2 HP motor features a self-locking gearbox and fail-safe brake on the input shaft. The compact winding drum, dual steel cable suspension drive system offers 750 lbs. load capacity. The car can travel up to 32 feet with a maximum of six stops. The standard car is 36" x 48" inside and can accommodate a passenger seated in a wheelchair with a standing companion.

The Limited Use Lifted Access Flexilift elevator system requires less space than traditional elevators because of its smaller platform, compact automatic door design, reduced overhead space requirement and shallow pit. A standard wall support structure system attaches to a load bearing wall to support and provide easy installation of the guide rails and hydraulic jack. The flexi-structure option is a prefabricated steel box frame that fits inside irregular hoistways and anchors to the existing walls to adapt to varying site conditions. The Flexi-lift elevator requires a minimum overhead clearance of 9'-6" and a minimum 14 inch deep pit. The elevator's maximum rated load shall not exceed 1,400 pounds and the inside platform area may be up to 54" x 54".

As part of its Petition, Petitioner submitted a copy of the American Society of Mechanical Engineers (ASME) safety code for elevators and escalators. ASME defines a limited-use/limited application elevator to be "a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities."

Due to building code restrictions, an elevator is sometimes necessary to meet the needs of the disabled individual. Building codes mandate that wheelchair lifts cannot penetrate a floor and cannot lift higher than twelve feet. All the above described elevators are sold by Petitioner with installation.

The Inclinator Homewaiter (dumbwaiter) can travel up to 35 feet, opening on any or all three sides at different stations, either at counter level or floor level. The drive unit can be placed at the base of the hoistway, overhead, or adjacent at any level, and requires ordinary 115 v, 15 AMP house current on its own circuit. The car can be as large as 24"x24"x24" and is built of 16 gauge steel panels attached to a heavy-gauge steel base and hoisted by aircraft quality cable. It will carry up to 75 lbs. The fully automatic controls allow calling or dispatching from any station, with optional key operated switches available.

Applicable Law and Regulations

Section 1105 of the Tax Law imposes sales tax upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular

course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or lands are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter. . . (emphasis added)

Section 1101(b) (9) (i) of the Tax Law provides as follows:

(9) Capital improvement. (i) An addition or alteration to real property which:

(A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(B) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and

(C) Is intended to become a permanent installation.

Section 1115(a) of the Tax Law provides, in part, as follows:

Sec. 1115. Exemptions from sales and use taxes.--(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(3) 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 but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

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

* * *

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen, or adding to, altering or improving real property, property or land of such an organization, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land of an organization described in subdivision (a) of section eleven hundred sixteen, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(17) Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section eleven hundred sixteen, for whom he is adding to, or improving real property, property or land by a capital improvement, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property; provided, however, that if such sale is made pursuant to a contract irrevocably entered into before September first, nineteen hundred sixty-nine, no exemption shall exist under this paragraph. (emphasis added)

Section 1115(g) of the Tax Law provides in part:

Services otherwise taxable under paragraph (3) of subdivision (c) of section eleven hundred five shall be exempt from tax (1) if performed upon prosthetic aids, hearing aids, eyeglasses, artificial devices or medical equipment when receipts from the retail sale of such items are exempt from tax under the provisions of paragraphs three and four of subdivision (a) of this section

Section 528.4 of the Sales and Use Tax Regulations provides, in part:

* * *

(e) Medical equipment. (1) Medical equipment means machinery, apparatus and other devices (other than prosthetic aids, hearing aid, eye glasses 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 illness or disease 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.

Example 1: Items such as hospital beds, wheel chairs, hemodialysis equipment, iron lungs, respirators, oxygen tents, crutches, back and neck braces, trusses, trapeze bars, walkers, inhalators, nebulizer and traction equipment are exempt medical equipment.

Section 528.5 of the Sales and Use Tax Regulations provides, in part:

Section 528.5. Prosthetic aids.--(Tax Law Secs. 1115(a)(4), 1115(g)). (a) Exemption. Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof, purchased to correct or alleviate physical incapacity in human beings are exempt from the tax.

(b) Qualifications. (1) In order to qualify as a prosthetic aid, a hearing aid, eyeglasses or an artificial device, the property must either completely or partially replace 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.

* * *

Example 7: Items installed on motor vehicles to make them adaptable for use by handicapped persons are exempt. Such items may include special controls for paralytics or amputees and automotive lifts designed for the use of handicapped individuals for entry into motor vehicles.

* * *

(2) Parts, special attachments, special lettering, etc. that are added to or attached to tangible personal property, such as appliances, so that a handicapped person can use them are exempt. If tangible personal property is sold with special controls, lettering or devices, and the additional charge for the added features is separately stated on the bill for the tangible personal property, that portion of the sales receipts attributable to the added features is exempt. In determining whether the extra amount charged for the special controls, lettering or devices is reasonable, like items exclusive of the added features should be compared with the same item with the added features.

* * *

(c) Replacement parts. (1) Replacement parts for prosthetic aids, hearing aids, eyeglasses and artificial devices must be identifiable as such at the time the retail sale is made. If the replacement parts are not identifiable parts for prosthetic aids, the purchaser must pay the tax at the time of purchase. The purchaser may apply to the Sales Tax Bureau for a refund of the tax paid provided he can show that the replacement parts were used on exempt prosthetic aids.

* * *

(d) Servicing and repairing. Receipts from installing, maintaining, servicing and repairing prosthetic aids, hearing aids, eyeglasses and artificial devices are exempt from the tax imposed by paragraph (3) of subdivision (c) of section 1105 of the Tax Law, if the items upon which such services were performed are exempt. If tangible personal property of the sort described in paragraph (2) of subdivision (b) of this section is repaired, maintained, or serviced, only that portion of the charge attributable to the features added for the use of the handicapped is exempt from the tax, and only if the charge is separately stated on the service bill. (emphasis added)

Section 541.1(c) of the Sales and Use Tax Regulations provides that "[r]eceipts from the performance of a capital improvement to real property by a contractor are not subject to the sales tax."

In Plattekill Mountain Ski Center, Inc., Dec St Tx Comm, March 9, 1984, TSB-H-84(58)S the Tax Commission held that the purchase by the petitioner of rescue toboggans to transport injured skiers off its mountains and which were of no use in the absence of illness or injury, constituted medical equipment qualifying for the exemption of Section 1115(a)(3) of the Tax Law.

In Michael K. Leary, D/B/A Access Lifts, Adv Op Comm T&F, January 4, 1993, TSB-A-93(3)S, it was concluded that power door openers that are operated by specialty sip or puff controls, pool lifts, stairway lifts, vertical wheelchair lifts and incline wheelchair lifts constitute devices purchased to correct or alleviate physical incapacity in human beings and, thus, the purchases of such devices are exempt from sales tax pursuant to Section 1115(a)(4) of the Tax Law. Power door openers that can be operated by controls other than the sip or puff method are not entitled to the exemption.

Opinion

In this case Petitioner sells Garaventa Stair-porters, Garaventa Stair-tracs and Garaventa Evacu-tracs to assist in transporting persons with mobility limitations up and down stairs by either sitting in the device or attaching a wheelchair to the device. Section 1115(a)(3) of the Tax Law provides that receipts from the retail sale of medical equipment shall not be subject to sales

tax, provided that such medical equipment is not purchased at retail for use in performing medical and similar services for compensation. Section 528.4 of the Sales and Use Tax Regulations defines medical equipment to mean machinery, apparatus and other devices which are intended for use in the cure, mitigation, treatment or prevention of illness or disease or the correction or alleviation of physical incapacity in human beings. Example 1 of Section 528.4 of the Sales and Use Tax Regulation provides that wheelchairs constitute exempt medical equipment. Moreover, in Plattekill Mountain Ski Center, Inc., supra, rescue toboggans used to transport injured skiers off a mountain were held to be medical equipment. Accordingly, receipts from the retail sale of Garaventa Stair-porters, Garaventa Stair-tracs and Garaventa Evacu-tracs constitute receipts from the sale of exempt medical equipment and are not subject to sales and compensating use tax, provided such devices are not purchased at retail for use in performing medical and similar services for compensation. Petitioner's purchases of these items from its suppliers are also not subject to sales and compensating use tax, since they are purchased for resale, provided Petitioner furnishes the supplier a properly completed Resale Certificate.

As for the sale of CM Solution Patient Lifts which are designed to lift patients and disabled persons in and out of beds, wheelchairs, bathtubs, pools, etc., Section 1115(a)(4) of the Tax Law and Section 528.5 of the Sales and Use Tax Regulations provides that the receipts from the retail sales of prosthetic aids shall not be subject to sales tax. In Michael K. Leary, D/B/A Access Lifts, supra, pool lifts used to lift disabled persons in and out of pools were held to prosthetic aids. CM Solution Patient Lifts which are designed to lift patients and disabled persons in and out of beds, wheelchairs, bathtubs and pools constitute prosthetic aids. Therefore, receipts from the sale and installation of CM Solution Patient Lifts are not subject to sales and compensating use tax. Petitioner's purchases of this equipment from its suppliers are also not subject to sales and compensating use tax, since they are purchased for resale, provided Petitioner furnishes the supplier with a properly completed Resale Certificate.

With respect to the sale of Inclinator Homewaiters, in order for machinery, apparatus or other devices to qualify as medical equipment, such machinery, apparatus or other devices must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury or physical incapacity. Moreover, to qualify as a prosthetic aid, an artificial device 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 purpose and not be generally useful in the absence of illness, injury or physical incapacity. Home waiters can be generally useful in the absence of illness, injury or physical incapacity and are not primarily and customarily used for medical or prosthetic purposes. Therefore, home waiters do not qualify as medical equipment or prosthetic aids. In distinguishing Michael K. Leary, D/B/A Access Lifts, supra, stairway lifts, vertical wheelchair lifts and incline wheelchair lifts are primarily and customarily used to completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part and are not generally useful in the absence of illness, injury or physical

incapacity. Accordingly, receipts from Petitioner's sale and installation of Inclinator Home Waiters are not exempt under Sections 1115(a)(3) and (4) and 1115(g) of the Tax Law from the imposition of sales or compensating use tax, unless the purchaser is an exempt organization under Section 1116(a) of the Tax Law.

Elevators will qualify as prosthetic aids under Section 1115(a)(4) of the Tax Law when installed in a private residence for use by a disabled person. See Publication 822, Taxable Status of Medical Equipment and Supplies, Prosthetic Devices and Related Items, (7/87). Elevators will not qualify as prosthetic aids when installed in buildings other than private residences or when installed in a residence for use by a person who is not disabled. It should be noted, however, that pursuant to Section 1115(a)(17) of the Tax Law the sale of tangible personal property by a contractor, subcontractor or repairman to a person for whom he is adding to, or improving real property, property or land by a capital improvement is not subject to sales tax. Moreover, pursuant to Section 1105(c)(3)(iii) of the Tax Law and Section 541.1(c) of the Sales and Use Tax Regulations, receipts from the installation of a capital improvement to real property by a contractor are not subject to sales or use tax. The installation of the Minivator Residential Elevators, Elevette Residential Elevators, Classique Elevators, Limited Use Limited Access Flexilifts and Inclinator Homewaiters may constitute a capital improvement pursuant to Section 1101(b)(9)(i) of the Tax Law. Since Petitioner sells the elevators and home waiters with installation, Petitioner is acting as a contractor. Therefore, Petitioner is not required to collect sales tax on receipts from the sale and installation of such elevators and home waiters if Petitioner receives a properly completed Certificate of Capital Improvement (Form ST-124) within 90 days after rendering services. See Section 532.4 of the Sales and Use Tax Regulations. Petitioner is not required to collect sales tax on the sale of an elevator or home waiter, and the installation service, to an organization exempt from tax under Section 1116(a) of the Tax Law, even if the installation does not result in a capital improvement, if Petitioner timely receives appropriate documentation of the purchaser's exempt status. See Section 541.3 of the Sales and Use Tax Regulations.

Petitioner's purchases of elevators and home waiters from the manufacturer or suppliers will be subject to sales tax, except where such elevators or home waiters are purchased for resale, as when the purchaser installs them and they remain tangible personal property after installation, or they are purchased for installation in real property owned by an organization exempt from tax under Section 1116(a) and they become an integral component part of the realty (see Sections 1115(a)(15), (16) of the Tax Law). In these cases, Petitioner should present its suppliers with a properly completed Form ST-120.1, Contractor Exempt Purchase Certificate, within 90 days of the purchase date in order to make exempt

TSB-A-97(17)S
Sales Tax

purchases. Otherwise, Petitioner must pay tax on its purchases of elevators and home waiters. Petitioner may claim a credit or refund, however, of sales and compensating use tax paid on the purchase of an elevator that is installed in a private residence for use by a disabled person.

DATED: March 27, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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