

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

TSB-H-81 (17) S
Sales Tax
February 10, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801027B

On October 27, 1980, a Petition for Advisory Opinion was received from Modern Medical Systems Co., 1655 Jericho Turnpike, New Hyde Park, New York 11040.

The issue raised is whether the sale or rental of a resuscitator and apnea monitor system is subject to the sales tax imposed under Article 28 of the Tax Law.

The following equipment is supplied and constitutes the system sold or rented:

Healthdyne Infant Monitor, Model 16000
Intercom
Infant Ambu Bag
Patient Snap Leads
Electrodes
Healthdyne Belt with Leads (optional)

In addition, two home visitations and equipment delivery is included in the sales or rental price of the system.

The purpose of this system is the detection of and rescue of an infant from asphyxiation, and is designed for practical life-saving or brain damage avoidance for an infant at risk for "crib death" or Sudden Infant Death Syndrome (SIDS). An infant's respiration may be monitored by use of the apnea monitor, intercom and related equipment. The resuscitator is used to revive the infant should respiratory failure occur.

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales (including rentals) of tangible personal property. Section 1115(a) (3) of the Tax Law exempts from such taxes "Drugs and medicines intended for use. . . 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. . .but not including. . .medical equipment. . .and supplies. . . purchased at retail for use in performing medical and similar services for compensation."

The Sales and Use Tax Regulations defines the term "medical equipment" as ". . .machinery, apparatus and other 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 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." 20 NYCRR 528.4(e).

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Accordingly. Petitioner's sales or rentals of the following equipment constitute tax exempt sales or rentals of medical equipment or supplies:

Healthdyne Infant Monitor, Model 16000
Infant Ambu Bag
Patient Snap Leads
Electrodes
Healthdyne Belt with Leads

An intercom, although used on conjunction with the medical equipment described above, is also generally useful in the absence of illness, injury or physical incapacity. It therefore does not constitute exempt medical equipment, pursuant to 20 NYCRR 528.4(e), quoted above. Accordingly, receipts from the sale or rental of an intercom is subject to the tax imposed under Section 1105(a) of the Tax Law.

DATED: January 23, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau