

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

TSB-A-10(22)S
Sales Tax
May 19, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S100302C

Petitioners [REDACTED] and [REDACTED] (the Association) ask whether sales of low vision equipment sold to vision care professionals including optometrists, and sales of the low vision equipment by optometrists to retail customers, are subject to the sales tax.

We conclude that the low vision equipment sold by [REDACTED] qualifies for the exemptions from sales tax provided in Tax Law Section 1115(a)(4) and the receipts from the sale of the equipment are exempt when sold to and by the vision care professionals.

Facts

[REDACTED] is a manufacturer of magnifiers, telescopes, sun filters, binoculars, and electronic reading devices. The Association works with local affiliated optometric associations throughout New York State to enhance the vision care and health of the public and promote the art and science of optometry. Petitioners ask whether various products sold for use by individuals who suffer from low vision are subject to the sales tax imposed pursuant to section 1105(a) of the Tax Law. The products are hand held magnifiers, stand magnifiers, spectacle magnifiers, video magnifiers and closed circuit televisions, hand-held monocular telescopes, and absorptive filters.

Petitioners state that the magnifiers and telescopes enable persons whose vision has been severely impaired as a result of natural degradation, illness, or injury, to see. The magnifiers are designed for persons with low-vision and offered in designs that illuminate the object to be viewed and are of high magnification (2.7x-12.5x) and low distortion. [REDACTED] may sell some of the magnifiers in sets that provide different magnification strengths. The products are unlike traditional magnifying glasses which offer substantially lower magnification (1.5x-1.8x) and no illumination. Petitioners note that, although the low vision devices (magnifiers) could be used by persons with normal eyesight or only minimal impairment, the features, especially the significantly greater magnification, are far in excess of what the average person would need or find practical. Petitioners similarly note that the telescopes designed to be affixed to eyeglasses provide significant magnification (2.2x) and would likely impair the vision of normally sighted persons were they to use these items. Petitioners claim that the absorptive filters, while similar to sunglasses in design, have as their primary purpose the enhancement of a person's visual acuity. In contrast, sunglasses are designed for the primary purpose of protecting the eye from damaging ultraviolet rays and bright light. Petitioners state that the absorptive filters are necessary to improve the visual acuity of persons with low vision by enhancing color contrasts and are likewise not generally useful for persons who do not have low vision. [REDACTED] video magnifiers and closed circuit television products perform the same functions as the magnifiers and telescopes using enhanced technology. A camera is used to project the image onto a screen in lieu of merely viewing images through a lens.

The distant image can be captured and the magnification of the image can be changed and displayed in larger size onscreen without having to move closer to the object or to switch to a different power/sized lens. Thus, for example, images from a faraway chalk board can be projected onto the visually impaired person's computer video terminal in electronically enhanced magnification, filtration, and focus so that the distant material written on the chalk board is legible to the impaired person.

Analysis

Tax Law section 1115(a)(4) exempts receipts from the retail sale of prosthetic aids, hearing aids, eyeglasses, and artificial devices and component parts thereof purchased to alleviate physical incapacity in human beings from the sales and use tax imposed on the sale or use of tangible personal property pursuant to sections 1105(a) and 1110 of the Tax Law. The sales and use tax regulations provide that, in order to qualify as a prosthetic aid, hearing aid, eyeglasses or an artificial device, 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. (*See* 20 NYCRR 528.5) In contrast to eyeglasses and artificial devices used to correct deficient vision, the regulations note that nonprescription eyeglasses, nonprescription sunglasses, and non-corrective contact lenses are not exempt from tax. (*See* 20 NYCRR 528.5 *Example 13.*)

Like eyeglasses, [REDACTED] magnifiers, telescopes, and filters allow individuals with limited vision to read printed materials.

In *Pulse Data Humanware, Inc.*, Adv Op Comm Tx & Fin, April 27, 2005, TSB-A-05(14)S, products similar in design and purpose to [REDACTED] video magnifiers and closed circuit televisions were determined to be qualifying artificial devices and prostheses that replaced the function of inoperative or malfunctioning eyes.

[REDACTED] hand held magnifiers, stand magnifiers, spectacle magnifiers, video magnifiers and closed circuit televisions, hand-held monocular telescopes, and absorptive filters are artificial devices used to improve the sight of persons having low vision. Petitioners state that the devices are not generally useful to persons who are not afflicted with low vision, and that the equipment is used to replace the function of malfunctioning human eyes (i.e., the devices mitigate the effects of a person's low visual acuity).

Accordingly, [REDACTED] products, when sold for use by persons who have low vision, qualify for the exemption from sales tax provided in section 1115(a)(4) of the Tax Law. As property qualifying as exempt artificial devices and prosthetic aids pursuant to Tax Law section 1115(a)(4), these products are exempt from tax when sold to vision care professionals and are likewise exempt when sold by the vision care professionals to their customers. Though generally not useful for persons with normal vision, we note that [REDACTED] (as described on its Web site) has identified certain circumstances and limited situations where its products may have commercial application in the absence of low vision. Thus, for instance, its commercial sales division touts the

use of certain of its magnifiers and other products by jewelers, and coin and stamp collectors, and in specialized manufacturing processes. Sales of those products by the commercial sales department would not be exempt from tax under section 1115(a)(4) of the Tax Law.

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/S/

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