

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

TSB-A-14(16)S
Sales Tax
July 2, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130201A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether medical equipment (“the Medical Equipment”) it provides on loan to hospitals to be used in conjunction with catheters it sells to the hospitals are subject to sales or use tax. We conclude that the Medical Equipment Petitioner loans to hospitals under the circumstances described in the Petition along with the catheters are both subject to sales tax.

Facts

Petitioner is located in the State of Washington and is registered for sales tax with the Department. Petitioner sells catheters to hospitals in this State. Petitioner also provides those hospitals with Medical Equipment to be used in conjunction with the catheters. The Medical Equipment can be used only with the Petitioner’s catheters and vice-versa. Petitioner explicitly states that it does not sell the Medical Equipment, but rather, it is provided “free to use on loan” with the catheters. Ownership of the equipment remains with Petitioner. If a hospital ceases buying catheters from Petitioner, the Medical Equipment is required to be returned to Petitioner. Petitioner also notes that all of its sales in this State of catheters and associated loans of Medical Equipment are to tax exempt hospitals.

Analysis

The receipts from every retail sale of tangible personal property are subject to sales tax unless otherwise exempt or excluded. *See* Tax Law § 1105(a). A “retail sale” includes every purchase of tangible personal property that is not resold as such. *See* Tax Law § 1101(b)(4)(i). A “sale” includes any transfer of title or possession, conditional or otherwise, in any manner whatsoever, for a consideration. *See* Tax Law § 1101(b)(5). Purchases of medical equipment and supplies used in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, or to correct or alleviate physical incapacity, are exempt from sales and use tax unless they are purchased at retail for use in performing medical services for compensation. *See* Tax Law § 1115(a)(3)) and 20 NYCRR §428.4(h). “Medical supplies” include those used in the cure, mitigation, treatment or prevention of illnesses or diseases or for the correction or alleviation of physical incapacity. *See* 20 NYCRR § 528.4(g)(1).

Petitioner’s Medical Equipment is being loaned in conjunction with the sales of the catheters, although for no charge. As a result, the loan of the equipment must be viewed as part of the sale of the catheters and the total sales price would be subject to sales tax. The combined sale/loan would not qualify for exemption under Tax Law § 1115(a)(3) as a sale of medical

equipment and supplies as it is being sold at retail to hospitals for use in performing medical services for compensation.

However, Petitioner states that all of its sales of the catheters and associated loans of Medical Equipment are to hospitals that are exempt from sales tax under Tax Law § 1116(a). Accordingly, no sales tax would be owed on such sales/loans. Petitioner must maintain records documenting the exemptions. The records for each sale/loan should include a copy of Petitioner's invoice listing the exempt hospital as the purchaser and the copy of the *Exempt Organization Exempt Purchase Certificate* (Form ST-119.1) completed by the hospital.

DATED: July 2, 2014

/S/

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Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.