

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether its sales of collagen wound dressings and collagen membranes intended for use during dental surgery are exempt from State and local sales and use tax (tax) under Tax Law § 1115(a)(4). We conclude that these products are not exempt prosthetic aids under Tax Law § 1115(a)(4), but these products are exempt from tax under Tax Law § 1115(a)(3) where they are consumed by humans for the preservation of health.

Facts

Petitioner is a medical products manufacturer. Petitioner's product line includes collagen wound dressings and collagen membranes intended for use during dental surgery.

Collagen wound dressings are soft, white, pliable, non-friable, absorbent sponges made from collagen obtained from bovine deep flexor (Achilles) tendon. These wound dressings are intended for use on moist or bleeding wounds created during dental surgery where a stabilized blood clot can help control bleeding and protect the surface of the wound from further injury. The wound dressings can be used as temporary dressings prior to surgical closure or left in situs; the collagen wound dressings are totally absorbed by the body in 10 to 14 days.

Collagen membranes are white, compressed, absorbable, non-friable matrices made from collagen obtained from bovine deep flexor (Achilles) tendon. These implantable membranes have the strength to be sutured in place and provide wound stabilization and create space during guided tissue regeneration procedures where an extended resorption profile is desired. The membrane incorporates into the surrounding tissue and is generally absorbed within 4 to 8 weeks, eliminating the need for a second surgery to remove a non-absorbable membrane.

Analysis

Tax Law § 1115(a)(4) exempts from tax retail sales of “[p]rosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings.” Under the Sales Tax Regulations (Regulations), for property to qualify as a prosthetic aid, it must be primarily or customarily used to either completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part and not be generally useful otherwise. 20 NYCRR 528.5(b). The collagen wound dressings and collagen membranes do not completely or partially replace a missing body part or the function of a completely inoperative or permanently

malfunctioning body part. Instead, these products are designed to stabilize blood clotting and aid the healing of wounds incurred during dental surgery. Thus, the collagen wound dressings and collagen membranes are not prosthetic aids and are not exempt from tax under Tax Law § 1115(a)(4).

Tax Law § 1115(a)(3) provides an exemption for “products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein.” Regulation § 528.4 provides that “[p]roducts consumed by humans for the preservation of health include other substances used internally or externally, which are not ordinarily considered drugs or medicines.” Following this explication of the “preservation of health” exemption, both products described here qualify for exemption under Tax Law § 1115(a)(3) to the extent that they are left in situ during dental surgery to be absorbed by the human body during the healing/tissue regeneration process (*see*, TSB-A-13[26]S). Note, however, that sales of collagen wound dressings or collagen membranes for temporary use prior to surgical closure would be taxable supplies when purchased for performing medical and similar services for compensation.

DATED: June 30, 2020

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DEBORAH R. LIEBMAN
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.

