

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

TSB-A-89 (34)S
Sales Tax
September 14, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890125A

On January 25, 1989 a Petition for Advisory Opinion was received from New Directions International Inc., 5678 Main Street, Williamsville, New York 14221.

The issue raised is whether the sale of wheelchair wheel covers qualify for exemption from sales tax as medical equipment and supplies and, if such sales are exempt, are the costs to produce the wheel covers also exempt from sales tax.

Petitioner manufactures plastic wheelchair wheel covers. The wheelchair cover clips onto the wheelchair and covers the entire spoke area of the wheel. They are removable and can be decorated to give them a more attractive appearance. The covers' main purpose is to prevent the fingers of the individual who is confined to the wheelchair from getting caught in the spokes of the wheelchair wheels while in motion and causing serious harm to the occupant. They also prevent any foreign objects from being caught in spokes thus preventing damage to the wheelchair wheels which could cause the wheelchair to tip over. Since the wheel covers cover the entire wheel area, they further reduce the need for maintenance by preventing dirt from accumulating on the wheels as rapidly as on an uncovered wheel.

Petitioner currently sells its products to dealers of medical equipment and supplies who in turn sell to institutions such as nursing homes, hospitals and medical supply stores. Petitioner anticipates selling directly to the users in the near future.

Production costs of the wheelchair wheel covers consist of the cost of the plastic used in manufacturing the cover and the cost of the silk screening and cutting of the plastic to the desired size and shape. The latter two processes are performed by subcontractors.

Section 1115(a)(3) of the Tax Law exempts from sales tax:

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....

Section 528.4(e) of the Sales and Use Tax Regulations defines medical equipment as "...machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eyeglasses and artificial 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".

(2) To qualify for exemption, equipment must be primarily and customarily used for medical purposes and cannot 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, respirations, oxygen tents, crutches, back and neck braces, trusses, tropeze bars, walkers, inhalators, nebulizers and traction equipment are exempt medical equipment.

Petitioner's wheel chair wheel covers are considered to be a component part of the wheel chairs and thus their sale qualifies for exemption under section 1115(a)(3) of the Tax Law. (This exemption does not apply to medical equipment and supplies purchased for use in performing medical or similar services for compensation. It is immaterial whether the covers are sold separately or along with the wheel chairs.

Regarding the production of the wheelchair wheel covers, the following provisions of the sales tax regulations apply:

§526.6(c) Resale exclusion. (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

§528.13(a) (1) An exemption is allowed from the tax imposed under section 1105(a) of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of:

(i) machinery or equipment used or consumed directly and predominantly in the production for sale of tangible personal property, gas, electricity, refrigeration or steam, by manufacturing, processing, generating, assembling, refining, mining or extracting... .

Since Petitioner does produce tangible personal property for sale, machinery and equipment used directly and predominately to produce such tangible personal property qualifies for exemption. Also, that portion of the production of the wheelchair wheel covers which Petitioner subcontracts may be purchased for resale.

DATED: September 14, 1989

s/FRANK J. PUCCIA
Director
Technical Services

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