

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

TSB-A-93 (22)S  
Sales Tax  
March 31, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921207A

On December 7, 1992, a Petition for Advisory Opinion was received from Maxum Health Services Corp., 14850 Quorum Drive, Suite 400, Dallas, TX 75240.

The issue raised by the Petitioner, Maxum Health Services Corp., is whether Petitioner's leasing of tractor/trailer/MRI Units is exempt from New York State and local sales and use taxes pursuant to Section 1115(a)(26) of the Tax Law.

Petitioner operates mobile MRI tractor/trailer units in New York State.

The MRI is a magnetic resonance imaging device, which provides high ..... resolution images of the soft tissues of the body. The equipment and facilities necessary to provide this service are capital intensive and require highly trained technologists for its operation. Few hospitals or physician groups have either sufficient volume or adequate capital resources to justify providing this service on their own. Petitioner makes this equipment and a variety of client services available to numerous hospitals in a geographical area (the "route") under contract. Thus, smaller hospitals and physicians in smaller communities, unable to justify the purchase and operation of this equipment, can make this service available to their community on a daily, outpatient basis. Some hospitals choose to contract for this mobile service while their own staff becomes familiar with the technology or while a patient base is being established or, in some cases, to increase in-house capacity. Petitioner's mobile units are well suited to make this technologically advanced service available in these circumstances. They can travel on routes whereby the services are shared among a number of different hospitals or physician groups in different locations on specified days.

When Petitioner takes possession of and places the mobile unit in service, the trailer and equipment (hereinafter the "MRI Device") are inseparable. The custom built trailer is worthless to Petitioner without the specially designed mobile equipment installed. The eight week construction process of the trailer/MRI Unit cannot begin until the equipment is received nor, upon completion, can the equipment be removed without dismantling the trailer. The equipment is specially designed as mobile equipment and its use, once installed, in an other than a mobile environment would be cost prohibitive.

Petitioner would never purchase this equipment apart from the trailer nor could it, in its business, make any other use of this custom trailer without the equipment. The trailer, however, could be used to transport property separately from itself. The trailer/MRI Unit is frequently drawn between locations on the route by the tractor.

Petitioner must negotiate with the manufacturers separately and make arrangements to ship the equipment to the trailer manufacturer for installation since MRI trailer units are not a stock item. Petitioner then takes possession of the unit under a lease arrangement with the financing company,

Highline Financial Services in this instance. Petitioner never takes possession of the separate components, but rather accepts and places in service the trailer/MRI as a unit.

Petitioner has never dismantled a MRI/trailer unit and sold the components separately.

The tractor/trailer/MRI unit in combination weighs 75,000 pounds and is regularly operated on public highways and is appropriately registered.

Section 1101(b)(3) of the Tax Law defines receipts as "[T]he amount of the sales price of any property and the charge for any service taxable...without any deduction for expense..."

Section 1115 of the Tax Law provides, in pertinent part, as follows:

Sec. 1115. Exemptions from sales and use taxes.--(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

\* \* \*

(3) 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 but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

\* \* \*

(26) Tractors, trailers or semi-trailers, as such terms are defined in article one of the vehicle and traffic law, and property installed on such vehicles for their equipping, maintenance or repair, provided such vehicle is used in combination where the gross vehicle weight of such combination exceeds twenty-six thousand pounds.

Section 528 of the Sales and Use Tax Regulations provides, in part, as follows:

\* \* \*

Reg. Sec. 528.4. Drugs and Medicines, medical equipment and supplies ...

\* \* \*

(e) Medical equipment. (1) Medical equipment means machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eye glasses and artificial devices which qualify for exemption under section 1115(a)(4) of the Tax Law), 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 such equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury or physical capacity.

Example 1: Items such as hospital beds, wheel chairs, hemodialysis equipment, iron lungs, respirators, oxygen tents, crutches, back and neck braces, trusses, trapeze bars, walkers, inhalators, nebulizers and traction equipment are exempt medical equipment.

Example 2: A medical patient purchases an air conditioner to be used to lower air temperature to alleviate his illness. Since an air conditioner is non-medical in nature, it is not exempt from the tax.

Example 3: Orthodontic appliances are medical equipment.

Example 4: The purchase of a birth control device commonly known as an I. U. D. or intrauterine device is the purchase of medical equipment.

(3) Replacement parts for medical equipment are exempt from tax provided such replacement parts are identifiable as medical equipment replacement parts. If a replacement part is not identifiable as a part for medical equipment, the purchaser must pay the tax at the time of purchase. The purchaser may then apply directly to the Sales Tax Bureau for a refund of the tax paid provided he can show that the part was used to replace a defective part on exempt medical equipment.

(4) Medical equipment is not exempt if purchased by a person performing medical or similar services for compensation. See subdivision (g) of this section.

\* \* \*

(g) Supplies. (1) Supplies used in the cure, mitigation, treatment or prevention of illnesses or diseases or for the correction and alleviation of physical incapacity are exempt.

Example 1: Colostomy bags and the necessary accoutrements required for attachment are medical supplies.

Example 2: Bandages, gauze and dressings are medical supplies.

Example 3: Disposable hypodermic syringes and litmus paper used by diabetics are medical supplies.

(2) Medical supplies are not exempt if purchased by a person performing medical or similar services for compensation. (See subdivision (h) of this section.)

(h) Taxable medical equipment and supplies. (1) Medical equipment and supplies purchased for use in performing medical or similar services for compensation are not exempt from tax.

Example 1: Stethoscopes, syringes, wheel chairs, etc. purchased by physicians are not exempt.

Example 2: Resuscitators, stretchers and other such equipment purchased by an ambulance service are not exempt.

Example 3: Bandages, gauze, dressings, etc. are not exempt when purchased by a physician, ambulance service or other person who will use them in performing a medical service for compensation.

Example 4: Dental supplies such as porcelain, mercalloy, gold, silver, acrylic denture base, amalgam, composite resin, silicate, and dental floss are not exempt when purchased by a dentist who will use them in performing a dental service for compensation.

(2) Medical services for human beings include but are not limited to the practices of medicine, dentistry, therapy, chiropractic, nursing, podiatry, optometry and radiology, whether performed by a private practitioner, clinical laboratory, hospital, nursing home, ambulance service, clinic, or health maintenance facilities.

(3) It is immaterial whether the compensation is paid to the practitioner or institution by the patient or another source.

\* \* \*

Section 528.26(c)(1) of the Sales and Use Tax Regulations states:

(c) Purchases. (1) Generally, the purchase or lease of a qualifying vehicle or property installed on such vehicle for its equipping, maintenance or repair may be made without the payment of sales tax provided the purchaser gives to the vendor a properly completed Exemption Certificate for Tractors, Trailers and Semi--Trailers within 90 days of the delivery of the property.

Example 1: An individual engaged in the transportation of property purchases a new tractor from a dealer. The purchase agreement calls for the tractor to be fully equipped for long haul situations. Such optional equipment includes the addition of a sleeper unit, an AM-FM stereo radio, splash guards, roof-mounted wind deflector and a built-in toolbox with hand tools included. The purchaser intends to use the tractor in combination with a trailer which when loaded will exceed 26,000 pounds gross vehicle weight. The purchase of the tractor and all optional equipment is exempt from sales tax provided the purchaser gives the vendor a properly completed Exemption Certificate for Tractors, Trailers or Semi-Trailers, within 90 days of the delivery of the property. (emphasis added)

In Advanced Technology Laboratories, Inc., Adv Op Comm T & F, March 6, 1992, TSB-A-92(19)S the Commissioner opined that diagnostic imaging systems using ultrasound technology constituted medical equipment pursuant to Section 1115(a)(3) of the Tax Law and Section 528.4(e)(1) of the Sales and Use Tax Regulations and the receipts from the sale such machines would be exempt from sales and use taxes unless purchased at retail for use in performing medical and similar services for compensation.

Pursuant to Section 1115(a)(26) of the Tax Law and Section 528.26(c)(1) of the Sales and Use Tax Regulations while the tractor and trailer leased by Petitioner, excluding the MRI Units, would be exempt from sales and use taxes, the MRI Unit does not fall within the purview of equipment installed on such vehicle to extend such exemption to the MRI Unit. The phrase "property installed on such vehicle for it equipping" as set forth in Section 528.26(c)(1) of the Sales and Use Tax Regulations, Example 1 refers to "optional equipment" commonly added to vehicles such as sleeper units, radios, splash guards, wind deflectors, etc.

Moreover, pursuant to Section 1115(a)(3) of the Tax Law, Section 528.4 of the Sales and Use Tax Regulations, and Advanced Technology Laboratories, Inc., supra, the MRI Unit constitutes medical equipment. Therefore, the purchase of such equipment by Petitioner would be subject to sales and use taxes since the MRI Unit is being purchased at retail for use in performing medical and similar services for compensation.

It is noted that the effect of Section 1101(b)(3) of the Tax Law is to treat as a single sale any sale in which any of the components cannot be singly purchased. Thus, even though the components of a particular sale can be separately stated, calculated or estimated, if they cannot be separately purchased, the combination of the items listed must be considered as one. Penfold v. State Tax Commission, 114 AD2d 696 (1985); Crushing Enterprises, Inc., Adv Op Comm T & F, October 19, 1990, TSB-A-90(30.1)S.

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Therefore, in the instant case if the tractor and trailer cannot be purchased separately from the purchase of the MRI Unit, the combination of the items listed must be considered as one, and the entire charge for the tractor/trailer/MRI Unit would be subject of sales and use taxes.

DATED: March 31, 1993

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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