

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

TSB-A-93 (3)S
Sales Tax
January 4, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920908C

On September 8, 1992, a Petition for Advisory Opinion was received from Michael K. Leary, D/B/A Access Lifts, 39 Shale Dr., Rochester, New York 14615.

The issue raised by Petitioner, Michael K. Leary, D/B/A Access Lifts, is whether purchases or installations of power door openers, pool lifts, stairway lifts, vertical wheelchair lifts and incline wheelchair lifts for use by handicapped individuals in residences and commercial buildings are subject to sales and use taxes.

Petitioner's sole business is the sale and installation of power door openers, pool lifts, stairway lifts, vertical wheelchair lifts and incline wheelchair lifts for use by the handicapped in residential and commercial buildings.

The power access automatic door opener is an electro-mechanical, self-contained, jamb mounted unit. The operator arm is not attached to the door, so that the door may be used in a manual mode by persons who are not handicapped. Also, no modifications are required to be made to the door or jambs during installation, and it just plugs into a regular 115vac wall outlet.

The power access door is activated by an electric signal from an array of controls developed to meet various special needs. The access devices to choose from are push button or plate wall styles, wireless coded radio-controlled switches or specialty sip or puff controls.

The pool lift device is designed for people who have difficulty getting in and out of swimming pools and for people in need of water therapy. The pool lift is normally installed at the shallow end of the pool, but can be placed wherever desired for optimal deck accessibility.

The pool lift is suitable for both above ground and in-ground pools. There is no under-water installation. Also, the pool, lift does not operate on electricity. The pool lift is water-powered. Water pressure from an ordinary garden hose provides the lifting power.

The stairway lifts have been specially deigned for people who need assistance in navigating stairs, particularly wheelchair users. The stairway lift installs in a few hours and will not harm the walls. The cable driven unit moves quietly and comfortably from one floor to the next. The seat swivels at the top for easy mounting and dismounting. The stairway lift include a seat belt, single arm, unit control switch and standard 110 volt plug in cord.

Vertical wheelchair lifts can be easily and economically incorporated in a variety of ways to overcome architectural barriers that face wheelchair users. Available in seven different lifting heights ranging from 42 inches to 12 feet, the wheelchair lift is ideal for residential and commercial

applications. A constant pressure weatherproof switch is mounted in the unit within easy reach of the passenger and can be activated with the hand, wrist, or any part of the arm. The switch is key operated to insure use by authorized people only.

The inclined wheelchair lift can be installed in residential and public buildings such as homes, schools, churches, hospital, etc. The lift is designed in a manner that the wheelchair platform folds leaving the stairway virtually unobstructed when not in use.

Section 1115(a) of the Tax Law provides, in part, as follows:

Sec. 1115. Exemptions from sales and us 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:

* * *

(4) Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings. (emphasis added)

Section 528.5 of the Sales and Use Tax Regulations provides, in part, as follows:

Section 528.5. Prosthetic aids.-- (Tax Law Secs. 1115(a)(4), 1115(g)). (a) Exemption. Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof, purchased to correct or alleviate physical incapacity in human beings are exempt from the tax.

(b) Qualifications. (1) In order to qualify as a prosthetic aid, a hearing aid, eyeglasses or an artificial device, the property must either completely or partially replace 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.

* * *

Example 7: Items installed on motor vehicles to make them adaptable for use by handicapped persons are exempt. Such items may include special controls for paralytics or amputees and automotive lifts designed for the use of handicapped individuals for entry into motor vehicles.

* * *

(2) Parts, special attachments, special lettering, etc. that are added to or attached to tangible personal property, such as appliances. so that a handicapped person can use them are exempt. If tangible personal property is sold with special controls, lettering or devices, and the additional charge for the added features is separately stated on the bill for the tangible personal property, that portion of the sales receipts attributable to the added features is exempt. In determining whether the extra amount charged for the special controls, lettering or devices is reasonable, like items exclusive of the added features should be compared with the same item with the added features.

* * *

(c) Replacement parts. (1) Replacement parts for prosthetic aids, hearing aids, eyeglasses and artificial devices must be identifiable as such at the time the retail sale is made. If the replacement parts are not identifiable parts for prosthetic aids, the purchaser must pay the tax at the time of purchase. The purchaser may apply to the Sales Tax Bureau for a refund of the tax paid provided he can show that the replacement parts were used on exempt prosthetic aids.

* * *

(d) Servicing and repairing. Receipts from installing, maintaining, servicing and repairing prosthetic aids, hearing aids, eyeglasses and artificial devices are exempt from the tax imposed by paragraph (3) of subdivision (c) of section 1105 of the Tax Law, if the items upon which such services were performed are exempt. If tangible personal property of the sort described in paragraph (2) of subdivision (b) of this section is repaired, maintained, or serviced, only that portion of the charge attributable to the features added for the use of thehandicapped is exempt from the tax, and only if the charge is separately stated on the service bill. (emphasis added)

Pursuant to Section 1115(a)(4) of the Tax Law and Section 528.5 of the Sales and Use Tax Regulations the purchases of artificial devices to correct or alleviate physical incapacity in human beings are exempt from sales tax. The above described power door openers that are operated by specialty sip or puff controls, pool lifts, stairway lifts, vertical wheelchair lifts and incline wheelchair lifts constitute artificial devices purchased to correct or alleviate physical incapacity in human beings since such devices are designed to be operated only by handicapped individuals, i.e., power doors can be operated manually by persons who are not handicapped, wheelchair lifts can be locked to insure use by authorized persons, etc.. Accordingly, the receipts from the purchase of such artificial devices, whether or not such device is purchased for use in performing medical and similar services for compensation, are not subject to sales tax. Power door openers that are operated by other devices are not entitled to the exemption.

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Moreover, while the installation of the power door openers that are operated by specialty sip or puff controls, pool lifts, stairway lifts, vertical wheelchair lifts and incline wheelchair lifts may constitute a capital improvement as defined in Section 1101(b)(9) of the Tax Law, pursuant to Section 528.5 of the Sales and Use Tax Regulations the receipts from installing, maintaining, servicing and repairing artificial devices, including replacement parts are not subject to sales tax.

In order to document an exemption from sales tax, when Petitioner purchases such devices from their manufacturers, Petitioner must present the manufacturers with a properly completed Exempt Use Certificate, Form ST-121.

It is noted that in order to use an Exempt Use Certificate, Form ST-121, Petitioner must be registered as a vendor for New York State sales tax purposes.

DATED: January 4, 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.