

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

TSB-A-93 (41)S  
Sales Tax  
June 29, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930325C

On March 25, 1993 a Petition for Advisory Opinion was received from Orthopedic Technology, Inc., 1905 N. Mac Arthur Dr., Tracy, CA 95376.

The issue raised by Petitioner, Orthopedic Technology, Inc., is whether it is required to collect sales tax on certain sales of medical equipment set forth in its catalog of items sold.

Petitioner manufactures and sells orthopedic devices which are sold at wholesale and to medical practitioners. Petitioner devices include such items as post-operative rehabilitation braces, knee-braces, cervical collars, finger-splints, and wrist supports as illustrated in its catalog of items sold.

Section 1115(a)(3) of the Tax Law provides for an exemption from sales tax for:

(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. (Emphasis supplied)

Petitioner's products as set forth in its catalog of items sold are products that qualify for the exemption contained in Section 1115(a)(3) of the Tax Law.

However the exemption contained in Section 1115(a)(3) of the Tax Law does not apply to the sale of medical equipment and supplies, other than drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

Therefore, when Petitioner sells products which are described in its catalog of items sold to someone who purchases the products at retail for use in performing medical and similar services for compensation, Petitioner must collect the sales tax due from the purchaser. However if the sale is

TSB-A-93 (41)S  
Sales Tax  
June 29, 1993

to an organization exempt under Section 1116(a) of the Tax Law or to someone who will resell them such as a wholesaler, then no sales tax will be due. In such a case the Petitioner must obtain the appropriate exemption certificate from the purchaser.

DATED: June 29, 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.