

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

TSB-A-99(11)S
Sales Tax
March 1, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980513A

On May 13, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from LS Systems, Inc., 1200 Jefferson Road, Rochester, NY 14623. Petitioner, LS Systems, Inc., provided additional information pertaining to the petition on June 10, 1998 and November 30, 1998.

The issues raised by Petitioner are:

- (1) Whether receipts from its sales of the below listed products, including shipping charges for deliveries within and without New York State, to individuals with physical, hearing and visual impairments are subject to sales tax.
- (2) Whether receipts from its sales of repair services performed on telecommunications devices (TTY) are subject to sales tax.
- (3) Whether expenses it incurs in the performance of such repair services such as gas, meals and lodging can be purchased without payment of sales tax.

Petitioner submitted the following categorized list of its products and provided a brief description of their functions. Petitioner sells its products to individuals with physical, hearing and visual impairments, both directly and through retailers which include stores, hotels and schools for the deaf.

A) TELECOMMUNICATION DEVICES (TTY) AND ACCESSORIES

1. *Devices - used in conjunction with conventional telephones and computers to enable a hearing/visually impaired person to communicate by these methods.*
 - Uniphone 1000
 - Uniphone 1140
 - EzPro Com
 - Miniprint 225
 - Miniprint 425
 - Superprint 4425
 - Superprint 4425 w/Ascii
 - Superprint 4225 w/o direct conn

- Minicom IV
- Superprint 4400 Ascii w/o printer
- Superprint 4400 /Ascii
- Compact
- Compact Ascii
- External TTY modem
- Shelf pay phone
- Motorized pay phone
- Internal TTY modem
- Superpro 80

2. Accessories for TTY Devices

- Switchskins (clear protective covering)
- Printer paper
- Large visual display (used by the visually impaired)
- AC adaptor (replacement battery)
- TTY dust cover
- TTY carrying case

B) ASSISTIVE TECHNOLOGY

1. Television Decoders - devices installed in televisions built before 1993 which are used for receiving closed captioned TV programs.

- Junior caption decoder
- Decoder 100
- Mycap Supervision

2. Telephone Amplifiers - devices which clarify or amplify sound.

- Amplified phone w/clarity cont.
- Voice carry over phone
- Cordless amplified phone
- Portable telephone amplifier
- Handset amplifier
- Amplifier receiver handset
- Hearing aid compatible handset

3. Telephone Answering Machines - designed to relay telephone calls so messages can be retrieved by hearing impaired individuals through telecommunications devices (TTY).
 - Powerphone
 - Answerall Model 100

4. Assistive Listening Devices - used to transmit sound directly from various sources (e.g., from a TV or a speaker in a classroom setting) to a hearing aid so that a hearing impaired individual hears only that sound and no outside noise.
 - Vibrating vest for sound
 - Pockettalkers
 - Direct set
 - Audioport
 - HF megaeear
 - Sound wizard listening system
 - Chorus universal listening system
 - Infared conference microscop
 - Companion FM system
 - Microloop system
 - Personal FM system
 - Personal FM education system

5. Clocks - time measuring devices with alarms which work by means of light or vibration.
 - Global access
 - Lil Ben vibrator
 - Vibrasound clock (sold separately)
 - Vibrator (sold separately)
 - Halhen Clock
 - Halhen vibrator
 - Halhen strobe
 - Vibralite wristwatch
 - Microvibrate pocketwatch
 - Shakeawake
 - Sonic boom clock

6. Guest room kits - kits containing devices that are required by the Americans with Disabilities Act to be available in every hotel room rented by persons with disabilities.

- Guestroom Kit - contains such items as flashing door alarms, phone ringer signals and closed caption devices for the TV.
- Guest kit w/o smoke/decoder
- Alert Master (door/phone alarms)
- Alert Master plus accessory - includes the baby crier option and two-bed receiver.

C) **SIGNALING DEVICES** - home automation devices (or parts of such) modified to convey some form of notice or warning to handicapped individuals by transmitting signals to one of three basic types of receivers; lamps, vibrators or strobe lights. All items on this list have been adapted for use by the handicapped by the addition of special parts or attachments.

- Door beacon
- Knock sensor
- Mini strobe light
- Strobe/door chime
- Phone flasher plug in
- Ring/flash phone plug in
- Phone strobe flasher
- Phone flasher w/transmitter
- Phone flasher w/transmitter, switch
- Phone flasher w/o transmitter
- Doorbell system w/chime
- Doorbell system w/o chime
- Magnetic switch - attaches to a doorbell to alert the individual when someone enters without ringing the bell.
- Telephone system
- Mini timer
- Smoke detector hardwired
- Smoke detector hardwired w/transmitter
- Smoke detector w/ plug in cord
- Smoke detector w/plug w/transmitter
- Smoke w/o strobe transmit
- Sonic alert baby cry
- Sonic receiver 101
- Sonic receiver 201
- Baby cry alerter

- Key chain remote - allows a visually impaired individual to transmit a signal which turns on the lamp upon entering.
- Carbon monoxide system
- Motion detector
- Lamp module
- Appliance module
- Chime module
- Screw-in-lamp module - used for parts of the house that don't have lamps, such as the bathroom.
- Split receptacle
- Wall switch - replaces the conventional wall switch so numerous receiver lamps are not needed all over the house.
- Dimmer switch - same as above only dims the light.
- Mini control center - allows the programming of different lights.
- Wireless telephone jack - provides for use of the TTY in rooms where there is no phone line.
- Button pager one way - a portable device which a handicapped individual can carry to transmit sound from a room they wish to monitor, such as a baby's bedroom.
- WP one way pager
- WP two way pager
- Sound activated pager

Applicable Law and Regulations

Section 1101(b) of the Tax Law states, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such

shipping or delivery is provided by such vendor or a third party. . . . (Emphasis added)

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- . . . there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property . . . or maintaining, servicing or repairing tangible personal property . . . not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith. . . .

Section 1115 of the Tax Law provides, in part:

(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 . . . 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.

(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)

* * *

(g) Services otherwise taxable under paragraph (3) of subdivision (c) of section eleven hundred five shall be exempt from tax (1) if performed upon prosthetic aids, hearing aids, eyeglasses, artificial devices or medical equipment when receipts from the retail sale of such items are exempt from tax under the provisions of paragraphs three and four of subdivision (a) of this section. . . .

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

The sales tax is a “destination tax,” that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate.

Section 526.5(g) of the Sales and Use Tax Regulations provides, in part:

Shipping or delivery. (1) Shipping or delivery charges by a vendor to its customer for the cost of transporting tangible personal property to the customer are part of the vendor’s receipt subject to tax where the sale of the property is subject to tax or where taxable services were performed on the property. This is so regardless of whether the vendor separately states such charges in a written contract or on an invoice and regardless of whether the vendor ships or delivers the property itself or hires a third party to ship or deliver the property. Similarly, charges by a vendor to its customer for picking up the customer’s property upon which the vendor is to perform taxable services are part of the vendor’s receipt from the sale of the service subject to tax.

Section 528.4(e) of the Sales and Use Tax Regulations provides, in part:

Medical equipment. (1) Medical equipment means machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eyeglasses 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, such equipment must be primarily and customarily used for medical purposes and not be generally useful in the absence of illness, injury or physical incapacity.

* * *

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 nonmedical in nature, it is not exempt from the tax.

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

(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 a 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 5: Sound amplification devices for hard-of-hearing people used with telephones or television sets are exempt.

Example 6: Specialized equipment used by the hearing impaired that converts teletype signals into telephone signals and telephone signals into teletype signals and thus enable a hearing impaired person to communicate by telephone, are exempt.

* * *

Example 11: Devices for installation of TV sets for receiving closed captioned programs are exempt.

* * *

(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.

Example 14: If a TV is sold with a closed captioned device built in, the portion of the price attributable to the closed captioned device, if separately stated on the bill, can be deducted from the selling price before computing the tax.

* * *

Example 16: Calculators which contain talking devices that are intended for the use of blind people are subject to tax. However, that portion of the price of the calculator attributable to the talking device is exempt from tax, if separately stated on the bill for the calculator.

(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.

Example 1: Batteries for hearing aids which are clearly labeled as such by the manufacturer are exempt replacement parts.

(2) Supplies used in conjunction with prosthetic aids, hearing aids, eyeglasses and artificial devices are not exempt from tax.

* * *

Example 3: Paper that may be used to produce hard copy communication that is used in conjunction with the communication devices described in example 6 of paragraph (1) of subdivision (b) is a taxable supply.

* * *

(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. . .

Opinion

Issue 1

Section 1115(a)(3) of the Tax Law exempts medical equipment and supplies from sales and compensating use tax, unless purchased at retail for use in performing medical and similar services for compensation. Under Section 1115(a)(4) of the Tax Law and Section 528.5 of the Sales and Use Tax Regulations, receipts from the sales of 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 sales tax, even when purchased at retail by providers of medical services. In order to qualify as a prosthetic aid, hearing aid or an artificial device, the property must either completely or partially replace a 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. Examples 5, 6, and 11 of Section 528.5(b) of the Sales and Use Tax Regulations provide that devices used by hearing impaired people which provide for telephone and television sound amplification, telecommunications, and the receiving of closed captioned TV programs constitute prosthetic devices. Accordingly, Petitioner's products listed under categories **A**1, telecommunication devices, **B**1, television decoders, **B**2, telephone amplifiers **B**3, telephone answering machines and **B**4, assistive listening devices qualify as prosthetic aids or artificial devices as defined by Section 528.5(b)(1) of the Sales and Use Tax Regulations and are exempt from sales and use taxes pursuant to Section 1115(a)(4) of the Tax Law (see Publication 822, Taxable Status of Medical Equipment and Supplies, Prosthetic Devices and Related Items, (7/87); Brian Dee, DBA Edgerton Electronics, Adv Op St Tx Comm, November 24, 1982, TSB-A-82(41)S).

Petitioner's products listed under categories **B**5, clocks, **B**6, guest room kits and **C** signaling devices, substitute their ability to convey some form of notice or warning (through the use of vibrators and flashing lights) to handicapped individuals for some of their lost ability to see or hear. Moreover, they are primarily and customarily used for such purposes and are not generally useful in the absence of illness, injury or physical incapacity. Therefore, the products listed in these three categories also qualify as prosthetic devices exempt from the sales and compensating use taxes under Section 1115(a)(4) of the Tax Law.

With regard to all of the above products, in the case of an item sold with special feature(s) added so that a handicapped person may use it, such as a conventional telephone to which an amplifier has been added for use by a hearing impaired individual, the entire charge for the item is

taxable unless the additional charge for the special feature(s) is separately stated on the bill to the customer. If separately stated, that portion of the sales receipts attributable to the added feature(s) is exempt. See Section 528.5(b)(2) of the Sales and Use Tax Regulations.

As to the taxability of the items listed in category A)2, accessories for TTY devices, only such parts that are clearly identifiable as replacement parts for exempt prosthetic aids at the time the retail sale is made are exempt from tax, e.g., batteries for telecommunications devices which are clearly labeled as such by the manufacturer. If the replacement parts are not identifiable parts for prosthetic aids, the purchaser must pay the tax at the time of purchase and may apply for a refund of the tax paid if it can be shown that the replacement parts were used on exempt prosthetic aids. See Section 528.5(c)(1) of the Sales and Use Tax Regulations. The switchskins, large visual display and TTY dust cover, provided they are attached to the TTY, are component parts of the prosthetic devices and are also exempt from sales and use taxes under Section 1115(a)(4) of the Tax Law. However, supplies used in conjunction with prosthetic aids are not exempt from tax. The TTY carrying case and the printer paper used to produce hard copy communication that is used in conjunction with telecommunications devices are taxable supplies where delivery occurs in New York State. See Section 528.5(c)(2) of the Sales and Use Tax Regulations. Conversely, when delivery is made to an address outside of New York State, the sale is deemed to take place at such point of delivery and no New York sales tax would be imposed. See Section 525.2(a)(3) of the Sales and Use Tax Regulations.

All shipping charges incurred by Petitioner and included in the charges to its customers are included in the definition of "receipt" provided in Section 1101(b)(3) of the Tax Law. Therefore, the charge to a customer for shipping is subject to tax only when the receipt from Petitioner's sale is subject to tax. When Petitioner makes a nontaxable sale, the amount charged to its customers, including shipping, is not subject to tax.

It is noted that if Petitioner's sales are to an organization exempt under Section 1116(a) of the Tax Law, then no sales or compensating use tax will be due, provided that Petitioner obtains the Exempt Organization Certification (ST-119.1) or other appropriate exemption document from the purchaser within 90 days of the date of sale. See Part 529 of the Sales and Use Tax Regulations for rules respecting exempt organizations. If Petitioner's sales are to a retailer for resale, then no sales or compensating use tax will be due if Petitioner obtains a resale certificate (Form ST-120) within 90 days of the date of sale. See Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations.

Issue 2

Section 1115(g) of the Tax Law provides that repair services to tangible personal property otherwise taxable under Section 1105(c)(3) of the Tax Law are exempt from sales tax if performed upon prosthetic aids or artificial devices when receipts from the sale of such items are exempt from

TSB-A-99(11)S
Sales Tax
March 1, 1999

tax under the provisions of Section 1115(a)(4). Since receipts from the sale of telecommunications devices are exempt from tax under the provisions of Section 1115(a)(4) of the Tax Law, receipts from Petitioner's repair services to such devices are not subject to sales and compensating use taxes.

Issue 3

The sales tax is imposed on the receipts, unless otherwise exempt, from every retail sale of tangible personal property and sales of specifically enumerated services, from the sale of restaurant meals and from charges for hotel occupancy. See Section 525.2 of the Sales and Use Tax Regulations. Therefore, unless Petitioner qualifies as an exempt organization under Section 1116(a) of the Tax Law and has established its exempt status with the Technical Services Bureau, or makes the purchases in question as agent for an exempt organization, its purchase of business expense items such as gas, meals and lodging are subject to tax under Section 1105 of the Tax Law.

DATED: March 1, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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