

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

TSB-A-81(58)S  
Sales Tax  
November 27, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810810B

On August 10, 1981 a Petition for Advisory Opinion was received from Pharmacia, Inc., 800 Centennial Avenue, Piscataway, New Jersey 08854.

The issue raised is whether Petitioner's sales of certain diagnostic products to hospitals, clinical laboratories and physicians are exempt from sales tax.

Petitioner, an out-of-state vendor, sells and delivers certain diagnostic products to hospitals, clinical laboratories, and physicians located in New York State. These diagnostic products are normally sold in kits which consist of chemical solutions, glass tubes, and glass plates. The chemical solutions include substances which are commonly used as medicines, such as insulin, digoxin, and ragweed extracts. These chemical solutions are used to test the body fluids of a patient, such as blood, urine, and amniotic fluid. The tests are performed only by or upon the order of a physician, and are used to determine the presence and amount of certain chemical and biological properties. This determination is used in the diagnosis and treatment of three types of medical conditions: (1) diabetes and other metabolic and pancreatic diseases; (2) allergies, such as asthma, eczema, and hay fever; and (3) hormonal levels in pregnancy.

Petitioner states that the Food and Drug Administration has classified these products as "in vitro diagnostic products for human use" which are further classified as drugs. Petitioner's diagnostic products are used externally on a human being's body fluids to identify biochemical conditions within the human body.

Section 1105(a) of the Tax Law imposes a tax on "the receipts from every retail sale of tangible personal property, except as otherwise provided by this article."

Section 1115(a)(3) exempts receipts from the retail sale of: "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 . . . and supplies for such use . . . but not including . . . medical equipment and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation."

The terms "drugs and medicines" are illustrated in the Sales and Use Tax Regulations as follows:

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"Example 6. Any diagnostic drug, chemical or other substance which is used internally or externally on a human, such as a barium product for gastric X-rays, is exempt." (Emphasis added) 20 NYCRR 528.4(b).

The Sales and Use Tax Regulations further provide that "medical supplies are not exempt if purchased by a person performing medical or similar services for compensation." 20 NYCRR 528.4(g)(2). Medical services for human beings include the practice of medicine by a private practitioner, a clinical laboratory and a hospital, whether the services are paid for by the patient or another source. 20 NYCRR 528.4(h).

Section 1116(a) of the Tax Law exempts certain purchasers from payment of tax on purchases of taxable property or services. Such exemption is granted to the State of New York and its agencies and municipalities, the Federal government and its agencies and certain non-profit organizations (i.e. religious, charitable, educational organizations) and veterans groups.

The diagnostic kits sold by Petitioner are classified as medical supplies rather than drugs and medicines within the meaning and intent of Section 1115(a)(3) of the Tax Law, notwithstanding the presence of certain drugs or medicines as components of the kits. Petitioner's kits are not used internally or externally on a human as contemplated in Regulation 528.4(b).

Accordingly, Petitioner is required to collect sales tax on its sales of diagnostic kits to customers who provide medical or similar services for compensation unless such customer is entitled to exemption pursuant to section 1116(a) of the Tax Law and furnishes Petitioner with a properly completed exemption certificate or other documentary evidence of its exempt status. Where the customer is the State of New York or one of its agencies or municipalities or the Federal government or one of its agencies, a contract or purchase order issued in its name is satisfactory documentation of its exempt status. A non-profit organization must issue a properly completed Exempt Organization Certification (ST-119.1) to Petitioner to establish its exempt status. Petitioner's sales of diagnostic kits to customers who are not engaged in providing medical or similar services for compensation are exempt from sales tax. Tax Law §1115(a)(3) and 20 NYCRR 528.4(g).

DATED: November 12, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau