

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

TSB-A-89 (9)S
Sales Tax
March 28, 1989

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S881216A

On December 16, 1988, a Petition for Advisory Opinion was received from Microvasive, Inc., 480 Pleasant Street, Watertown, MA 02172.

The issue raised is whether the sale of gastrostomy feeding tubes are exempt from sales tax pursuant to Section 1115(a)(3) and (4) of the Tax Law.

Petitioner is engaged in the sale of gastrostomy feeding tubes. Gastrostomy feeding tubes are used on patients who are incapable of oral feeding. Intravenous lines often do not provide enough calories to the patient for long periods of time and also pose other medical risks. Enteral feeding (through the use of gastrostomy feeding tubes) is usually the preferred treatment for such patients, provided the patient's gastrointestinal tract is intact. Enteral feeding tubes allow substances to enter the stomach unaltered through a tube which penetrates the abdominal wall.

Until recently, gastrostomy tubes required surgical placement. Such surgical procedures are often done under general anesthesia, usually to patients who are considered high risks for surgery. A new procedure, called percutaneous endoscopic gastrostomy (PEG), allows a feeding tube to be placed in a patient without surgery or general anesthesia. Petitioner's gastrostomy feeding tube kits are used during one type of PEG procedure. Most patients of the PEG procedure will never again resume the oral ingestion of food.

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

"[d]rugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illness or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity ..., other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation."

Section 1115(a)(4) of the Tax Law provides for an exemption from sales and use taxes for "[p]rosthentic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings."

The Sales and Use Tax Regulations provide that:

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. 20 NYCRR 528.5(b)(1).

Accordingly, gastrostomy feeding tubes that either completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part qualify as a prosthetic aid 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. Moreover, gastrostomy feeding tubes that are not exempt under Section 1115(a)(4) of the Tax Law but that are used in the cure, mitigation, treatment or prevention of illness or disease in human beings or to correct or alleviate physical incapacity are exempt from sales and use taxes pursuant to Section 1115(a)(3) of the Tax Law except when purchased at retail for use in performing medical and similar services for compensation.

DATED: March 28, 1989

s/FRANK J. PUCCIA
Director
Technical Services

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