

**M e m o r a n d u m****425.0227.600**

To: Ms. Nenita Dela Cruz  
Return Analysis Section (MIC:35)

Date: November 5, 1997

From: John L. Waid  
Senior Tax Counsel

Subject: Capsure Contingency Shield

I am responding to your memorandum to the Legal Division dated September 24, 1997. you asked us to respond to the taxpayer regarding the taxability of X----- sales of the CapSure Contingency Shield (the "Shield"). You attached to your memorandum a letter X----- to the Board, dated June 26, 1997, who described the Shield as follows:

"This is a nipple-shaped medical device that assists the female bladder to prevent accidental leakage of urine. It is worn external to the body and is applied and removed by the patient. This product keeps urine in the bladder until the patient removes it to urinate. This product is discarded in the trash at the first sign of wear or after 7 days of use, whichever comes first, After a patient has seen a physician and a prescription for the product has been written, the patient calls X-----, Inc. The product is shipped UPS ground directly to the patient's address."

You are of the opinion that this product qualifies as a medicine under Regulation 1591 (b)(5). I am responding directly to you, because we do not agree. As Mr. X----- describes it, the Shield appears to be a urinary incontinence device. Unlike the typical catheter and collection bag, however, the Shield does not allow the urine to drain in a sanitary manner, but rather keeps it in the bladder until the patient is ready to urinate. It thus operates much like panty shields or diapers, which are not medicines. (Annot. 425.0522 (3/3/95).) Therefore, we conclude that the CapSure Contingency Shield is a device or apparatus excluded from the definition of "medicine" under Regulation 1591(c)(2) with the result that its sales are subject to tax.

JLW:sr