Memorandum

To: Mr. Robert Roos
   Oakland District Auditing - CH

From: John L. Waid
      Tax Counsel

Subject: SY -- XX-XXXXXX, SY -- XX-XXXXXX, SY -- XX-XXXXXX
         Use of Catheters Post-Surgically

I am answering your memorandum to me dated March 3, 1995. I apologize for the delay. You ask whether or not the post-surgical use of a drainage catheter which is also used to drain waste during surgery renders the sale of the catheter exempt from tax under Regulation 1591(b)(4) or (5). You ask if there is a time frame for post-surgical use under which we would consider the catheter as being used during surgery and after which we would determine the use to be post-surgery. You indicate that a memorandum from Robert Fields to the taxpayer suggests a period of 24 hours as the dividing line.

OPINION

We have previously determined that catheters which are used during surgery for drainage purposes and which also remain with the patient for such use post-surgically may qualify for the above exemptions. We have also previously rejected Mr. Fields’ suggestion of a 24-hour dividing line for post-surgical use. It is enough that the catheter is intended to remain with the patient for some indefinite period. For example, surgery for hemorrhoids causes the urinary sphincter to close up. As a result, a urinary catheter is inserted prior to the surgery and remains with the patient until such time as he recovers control of the sphincter. We would consider the catheter to qualify as a medicine under Regulation 1591(b)(5) because it assists the patient with a natural function post-surgically even though, should the patient recover function quickly, it could be removed less than 24 hours after the surgery.

We would distinguish this example from that where the catheter used during surgery is intended to, and does, remain with the patient for only a short period of time and is replaced by a longer-term catheter or is not replaced. This is of necessity a judgment call, and no hard and fast rule can be applied.