

M e m o r a n d u m**425.0696**

To: Mr. Robert Roos
Oakland District Auditing – CH

Date: April 3, 1995

From: John L. Waid
Tax Counsel

Subject: X-----
Pediatric Urinary Specimen Container

I am responding to your memorandum to the Legal Division dated January 31, 1995. You indicate that the Oakland District is currently auditing the taxpayer, and a question has arisen regarding the application of tax to sales of these items. You describe them as follows:

" ... The urinary bag is a plastic bag. A round hole is cut into it at the corner. The hole is surrounded with an adhesive, allowing the bag to be attached to the baby for the direct collection of urine. This arrangement is in lieu of the traditional 'leg' bag, worn on the patient with a catheter either attached externally or internally to the patient, and is one of several ways for medical staff to get an infant's urine sample. Such samples may be used for laboratory test purposes and fluid measurement. One of the bags has tubing attached to it, allowing samples to be taken from the bag. [¶¶] ... The urinary bag in question is only used to take samples for laboratory test purposes and fluid measurement and is never used as a prosthetic device or ostomy appliance "

You indicate that the taxpayer's representative, X-----, is of the opinion that all urinary bags worn on the person of the user should be considered medicines. His opinion is based on a paragraph (which you quoted) from a letter of Senior Tax Counsel Mary C. Armstrong dated October 2, 1989.

OPINION

In her letter to X-----, Ms. Armstrong discussed the issue of the taxation of catheters generally. The part of the letter which you quoted came from Exhibit "A" to the letter, which discussed individual devices. Ms. Armstrong also discussed leg bags in the body of the letter in the section on prosthetic devices.

Regulation 1591(c) (2) provides that "medicines" do not include "articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof." (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) As a rule, then, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines.

Regulation 1591(b) does provide that certain items which might otherwise be considered as being devices, etc., are defined as "medicines." Regulation 1591(b) (4) includes orthotic devices, or their replacements, designed to be worn on the person of the user as a brace, support, or other correction for the body structure. Regulation 1591(b) (5) includes prosthetic devices and their replacement parts designed to be worn on or in the person of the user to replace or assist in the functioning of a natural part of the human body.

Ms. Armstrong discussed leg bags in the context of related supplies for catheters. Her letter makes it clear that such bags are medicines to the same extent that the catheters to which they relate are considered medicines.

We are of the opinion that Exhibit "A" cannot be taken out of context to mean that the Legal Division is of the opinion that leg bags which do not perform one of the functions listed in Regulation 1591(b) may be considered medicines. You state that the bags in question are not prosthetic or orthotic devices. They are neither worn on the person nor do they assist the body in its natural function but, rather, merely collect urine for measurement or test purposes. As a result, they do not come within the terms of Regulation 1591(b) (4) or (5) and so, since no other provisions define bags used for such purposes as medicines, cannot be considered so. Sales of pediatric urinary specimen containers are subject to tax.

JLW:sr