

425.1000**Memorandum**

To: Mr. Arthur Monroe
Audit Review & Refunds (MIC:39)

Date: May 20, 1993

From: John L. Waid
Tax Counsel

Subject: **REDACTED TEXT**
Wright Linear Pumps

I am responding to your memorandum to me dated April 5, 1993. You indicated that the taxpayer, REDACTED TEXT, initially paid use tax on its purchases of five Wright Linear Pumps with associated appliances, but has since amended its return to exempt a portion of the purchase based on the use of the item and/or the nature of the treatment provided. All treatment is pursuant to doctor's orders; some is done in the clinic and some away from it. REDACTED TEXT has requested an opinion regarding the application of use tax to its purchases of these items and as to whether or not it should continue its claim for refund of some or all of the use tax which it previously paid. We assume that REDACTED TEXT purchased these items in transactions not subject to sales tax so that the use tax is the proper tax.

You attached to your memorandum copies of what appears to be a brochure put out by REDACTED TEXT entitled "REDACTED TEXT;" an article entitled "Postmastectomy Lymphedema Treated with the Wright Linear Pump, The Canadian Journal of Surgery, XXX, v (Sept. 1987), 368-370; a reprint from Archives of Physical Medicine and Rehabilitation, LXIV (March 1983), 132-133; a flyer describing the results of treatment with the pump; several invoices; and the request to amend its return. The brochure describes the operation of the Wright Linear Pump, in part, as follows:

"The pump reduces the size of the arm or leg [swollen due to intractable edema] by squeezing the fluid back into the normal circulation using a sleeve or trouser like appliance. This appliance is connected to a pump which inflates and deflates to specific pressures and for specific times prescribed by your physician.

[¶]

"A physician's referral is necessary for you to be seen in our office where an evaluation will be performed... Most limbs will fit into standard sleeve appliances, although some limbs require a custom-fit appliance due to length

or width differences. The limb is placed in the proper appliance (sleeve) which is connected to the pump. The pump is set for the proper pressures according the physician's orders and the client will recline in a position of comfort while the limb is pumped for a two to four hour period..."

OPINION

Section 6369, interpreted and implemented by Regulation 1591, provides that sales of medicine, when prescribed and sold or furnished under certain conditions for the treatment of a human being, are exempt from sales or use tax. (Reg. 1591(a).) Subdivision(b)(1) defines "medicine" to "mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and which is commonly recognized as a substance or preparation intended for such use." However, Regulation 1591(c)(2) adds 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.

We have previously determined that such compression devices are neither orthotic or prosthetic devices under the above definitions. They do not serve as a brace, etc., for the body structure nor do they replace or assist in the functioning of a natural part of the body. Finally, they are not fully worn on the body. Therefore, they are appliances, devices, etc., sales of which are subject to tax. As a result, REDACTED TEXT properly paid use tax on its purchases of these items. While we cannot recommend to a taxpayer that it not pursue a claim for refund if it wishes to do so, we do advise you that the claim should be denied based on the above authority.

JLW:es