

Cite as Det. No. 92-164, 12 WTD 205 (1993).

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition	)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Request of Ruling on Tax	)	
Liability of	)	No. 92-164
	)	
. . .	)	Registration No. . . .
	)	
	)	

- [1] RULE 18801 AND RCW 82.08.0283: SALES TAX -- EXEMPTION -- SUTURES. Surgical sutures, clips and staples along with disposable instruments, such as staple guns, clip applicers, loading units (cartridge devices) which apply these items to patients, are exempt from sales and use tax. Sales of non-disposable or reusable staple guns, clip applicers and loading units are taxable. Staple removers are subject to tax whether disposable or reusable.
- [2] RULE 18801, RCW 82.08.0281 AND RCW 82.08.0283: SALES TAX -- EXEMPTION -- LAPAROSCOPIC INSTRUMENTS. Laparoscopic instruments such as trocars, converters, sleeves, shears, grasps, dissectors are surgical tools or instruments and are not themselves prosthetic or orthotic devices or ostomic items. Furthermore, these laparoscopic instruments do not convey or deliver exempt items such as sutures, medical gases or prescribed drugs. Therefore, these instruments when sold alone are subject to sales tax whether they are disposable or reusable.
- [3] RULE 18801: SALES TAX -- EXEMPTION -- MEDICAL GASES -- PNEUMOPERITONEUM NEEDLES. Disposable, pneumoperitoneum needles are exempt from sales tax when they deliver prescribed medical gases to patients because the needles are part of the delivery system of an exempt item. If the needles are reusable on more than one patient, then they are taxable as part of a hospital's surgical equipment.

- [4] RULE 18801: SALES TAX -- EXEMPTION -- KITS OR PACKS OF SURGICAL INSTRUMENTS. Kits or packs containing many or all of the laparoscopic items, including trocars, sleeves, converters, needles, etc. along with the exempt surgical clips and disposable clip applicators are exempt as a unit from sales tax when the kits or packs are sold as such. The exemption for the kits applies because exempt items (the clips and disposable clip applicators) perform a primary purpose of the kits (wound closure).
- [5] RULE 18801: SALES TAX -- EXEMPTION -- SURGICAL INSTRUMENTS. Purse string instruments, ligating loops, forceps, sizers, and trocar tips are not prosthetic or orthotic devices or ostomic items. Furthermore, they do not deliver exempt items such as sutures or prescribed drugs. Thus, all of them are surgical instruments only, which are taxable whether disposable or not.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

DATES OF TELEPHONE CONFERENCES: . . .

#### NATURE OF ACTION

A taxpayer has requested a written opinion on whether sales of its products in Washington are subject to retail sales tax. The request is made pursuant to WAC 458-20-100, section 9 (Rule 100).

#### FACTS

De Luca, A.L.J. -- The taxpayer designs, manufactures and markets various surgical instruments. The instruments are primarily related to two surgical areas: wound closure and laparoscopic surgery. Wound-closure products include wound-closure materials themselves, such as surgical staples, clips, and sutures. Some of the products are used internally and do not degrade within the body, such as metal clips, metal staples, or permanent suture materials. Others are absorbable and degrade after a wound heals.

Other products used in wound closures include those items which convey or deliver materials utilized in closing wounds. They include both disposable and non-disposable instruments which apply either surgical staples, clips or sutures to internal or

external tissues or body parts. Such products may consist of both a cartridge device (loading unit), which houses staples or clips, and a delivery mechanism such as a staple gun or clip applier.

The final wound-closure related products are those used to remove staples or sutures after a wound is healed. Some of these products are disposable and others are nondisposable.

In laparoscopic surgery, surgeons begin by making small incisions in the body with trocars. Trocars are surgical instruments used to create small punctures rather than larger linear incisions. Once the punctures are created, surgeons insert tubes through which they pass surgical instruments. In laparoscopic surgery, the surgeons insert lighting and camera devices in addition to the surgical instruments used to perform the surgery. Laparoscopic products consist of instruments which make incisions, provide portals through which other instruments pass and support the laparoscopic surgical procedures.

#### DISCUSSION:

RCW 82.08.0281 and RCW 82.12.0275 exempt the sale or use of prescription drugs from retail sales tax and use tax, respectively.

RCW 82.08.0283 and RCW 82.12.0277 exempt the sale or use of insulin, prosthetic and orthotic devices, ostomic items and medically-prescribed oxygen from retail sales tax and use tax respectively. The Department of Revenue's rule applicable to these statutes is WAC 458-20-18801 (Rule 18801). The rule was amended effective February 18, 1992.

[1] Rule 18801 exempts sales of surgical sutures from the sales tax when prescribed by physicians or osteopaths, because the sutures are deemed to be prosthetic devices. Because the surgical clips and staples perform functions similar to the sutures, they too are exempt from sales tax when sold to hospitals, medical clinics or medical offices and prescribed to patients.

Disposable products or instruments used to apply the staples, clips or sutures are exempt from sales tax as well because they are a necessary part of the delivery system of an exempt item. These products include disposable staplers, staple-loading units (cartridges), and clip appliers. However, if such items are nondisposable, i.e. reusable on more than one specific patient, then sales of them are taxable.

The Department distinguishes the disposable items from the nondisposable ones, because the disposable ones, in effect, are

prescribed to specific patients. In contrast, the reusable ones are part of a hospital's or physician's durable medical or surgical equipment which are not prescribed to a specific patient, but are used on any or all patients needing them. Deaconess Medical Center v. Department of Rev., 58 Wn. App. 783 (1990). We note here that reusable items which are prescribed to specific patients can still be tax exempt if the items do not remain a part of a hospital's surgical or medical equipment. Rather, the items must belong to the patients. However, for the types of instruments involved here, that scenario does not seem plausible.

Staple removers are subject to sales tax whether disposable or reusable. They are not part of a delivery system of an exempt item which is used in or on the body.

[2] Laparoscopic instruments such as trocars, trocar tips, converters, sleeves, shears, grasps, dissectors are surgical instruments and are not themselves prosthetic or orthotic devices or ostomic items. Furthermore, these laparoscopic instruments do not deliver or apply exempt items such as sutures, prescribed drugs or medical gases. Therefore, these instruments when sold alone are subject to sales tax whether they are disposable or reusable.

[3] Another item listed is pneumoperitoneum needles. Apparently, physicians insert these needles into patients' abdomens. The needle delivers CO2 causing the abdominal area to expand to facilitate surgical procedures. Under WAC 458- 20-18801(5)(g), the sales tax does not apply to purchases of medical gases when used under a physician's order as part of a medical treatment for a specific patient. The Department considers the sale of CO2 when used in this manner an exempt medical gas. Because the needles are part of the delivery system of an exempt item, they too are tax exempt if they are disposable. If the needles are reusable on more than one patient as part of a hospital's surgical equipment, then they are taxable.

[4] We note that the taxpayer sells kits or packs containing many or all of the laparoscopic items, including trocars, sleeves, converters, needles, etc. along with the exempt surgical clips and disposable clip appliers. When the kits or packs are sold as such, they are exempt as a unit from sales tax. The reason for the unit exemption is that exempt items, the clips and disposable clip appliers, perform a primary purpose of the kits (wound closure).

[5] Finally, there are a few miscellaneous items left to address. They include purse string instruments, ligating loops, forceps, sizers. Some of these items are disposable. Like the

laparoscopic instruments, they themselves are not prosthetic or orthotic devices or ostomic items. Furthermore, they do not deliver exempt items such as sutures or prescribed drugs. Thus, all of them appear to be surgical instruments only, which are taxable.

RULING:

In accordance with this determination and the notations on the accompanying list of products, the taxpayer should collect and remit sales tax.

This opinion may be rescinded or revoked in the future, but any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

This legal opinion may be relied upon for tax reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(9) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the Department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the Department upon these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future; however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 24th day of June 1992.