

Cite as Det. No. 91-261S, 12 WTD 23 (1993).

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

In the Matter of the Petition ) S U P P L E M E N T A L  
For Refund of ) D E T E R M I N A T I O N  
)  
) No. 91-261S  
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. . . ) Registration No. . . .  
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- [1] RULE 18801, RCW 82.08.0281, RCW 82.12.0275: SALES AND USE TAXES -- PRESCRIPTION DRUGS -- SYRINGES -- MULTIPLE PATIENTS. Multiple-use syringes are not sales or use tax exempt if they are not prescribed for the particular use of specific patients. Such syringes are part of a hospital's durable medical or surgical equipment. Accord: Deaconess Medical Center v. Dept. of Revenue, 58 Wn.App. 783 (1990), Deaconess Medical Center v. Dept. of Revenue, Docket No. 87-2-2055-7 (Thurston County Superior Court, 1989).
- [2] RULE 18801, RCW 82.08.0281, RCW 82.12.0275: SALES AND USE TAXES -- SYRINGES, VIALS OR TUBES -- DIAGNOSIS OR PLASMA -- EXEMPTION. Empty syringes, vials or tubes which draw blood or other body fluids from patients for diagnostic purposes or to obtain plasma are not tax exempt. These items do not deliver prescription drugs to patients. However, if these items contain a prescribed reagent when the blood or fluid is drawn into them then they are exempt, because the reagent is exempt. Accord: Deaconess Medical Center v. Dept. of Revenue, 58 Wn.App. 783 (1990), Deaconess Medical Center v. Dept. of Revenue, Docket No. 87-2-2055-7 (Thurston County Superior Court, 1989).
- [3] RULE 18801, RCW 82.08.0281, RCW 82.12.0275, RCW 82.08.0283, RCW 82.12.0277: DURABLE MEDICAL GOODS -- SALES AND USE TAXES. Pumps, machines, parts, computers, medical gas tanks, hoses and similar items are not exempt from sales or use taxes if they are sold

to hospitals and not resold to patients. Usually, a hospital does not buy such equipment because it has been prescribed for a specific patient, and the patient does not buy the equipment. Instead, hospitals use such items for any and all patients who need them as part of the hospitals' durable medical or surgical equipment, such as heart-lung machines. Even if a hospital sells such an item to a patient, sales tax is owing unless the item is exempt by statute. Accord: Deaconess Medical Center v. Dept. of Revenue, 58 Wn.App. 783 (1990).

- [4] RULE 18801, RCW 82.08.0281, RCW 82.12.0275: SALES AND USE TAXES -- EXEMPTION -- PRESCRIPTION DRUGS -- CATHETERS. Catheters which deliver prescription drugs or contrast media into patients are exempt from sales and use taxes, even if they perform other functions. Accord: Deaconess Medical Center v. Dept. of Revenue, Docket No. 87-2-2055-7 (Thurston County Superior Court, 1989).
  
- [5] RULE 18801, RCW 82.08.0281, RCW 82.12.0275: SALES AND USE TAXES -- EXEMPTION -- PRESCRIPTION DRUGS -- TRAYS OR KITS. Trays or kits which contain catheters, needles, scalpels, guide wires, syringes, and reusable ports are exempt in whole from sales and use taxes if they include a prescription drug with a primary purpose to diagnose, cure, mitigate, treat or prevent disease or other human ailments.
  
- [6] RULE 18801, RCW 82.08.0281, RCW 82.12.0275, RCW 82.08.283, RCW 82.12.0277: PROSTHESES -- PRESCRIPTION DRUGS -- BITE STICKS -- SALES AND USE TAXES. Bite sticks or blocks are not exempt from sales or use taxes because they neither deliver prescription drugs nor replace a body part or function. Accord: Deaconess Medical Center v. Dept. of Revenue, Docket No. 87-2-2055-7 (Thurston County Superior Court, 1989).

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.

#### NATURE OF ACTION:

This supplemental determination concerns whether certain items are exempt from sales and use taxes as prostheses or prescription drugs.

#### FACTS:

De Luca, A.L.J. -- We described the facts, issues and the taxpayer's exceptions in Det. No. 91-261, 11 WTD 431 (1991), and we will not repeat them except where necessary. Following the issuance of 11 WTD 431, numerous inquiries were made asking the Department of Revenue whether certain items were exempt from sales or use taxes. Due to the number of inquiries, the Department has decided to issue a supplemental determination to address them.

#### DISCUSSION:

##### SYRINGES:

We held in 11 WTD 431:

... we believe syringes are not conceptually distinct from the prescribed solutions they deliver. ..., syringes perform a function similar to an IV - injecting prescribed drugs into patients. The fact that it takes less time to inject with a syringe or that a smaller needle is used is not significant for our purposes. Therefore, syringes, whether purchased empty or with a legend drug contained in them, are exempt from sales and use taxes like the prescribed solutions they subsequently deliver. Deaconess Medical Center v. Department of Rev., Docket No. 87-2-2055-7 (Thurston County Superior Court, 1989).

Thus, single-use syringes which inject prescription drugs into patients are exempt. Similarly, multiple-use syringes are exempt if they inject prescribed drugs for the particular use of specific patients. That is, a multiple-use syringe must be prescribed for a specific patient to be exempt.

[1] We understand there also are multiple-use syringes which are not prescribed for individual patients. Such multiple patient syringes are not exempt because they are part of a hospital's durable medical or surgical equipment, like IV stands or heart-lung machines, which are used on any and all patients who need them. Deaconess Medical Center v. Department of Rev., 58 Wn. App. 783 (1990) and Deaconess, (Superior Court), supra.

[2] We have had questions regarding other types of syringes, vials or tubes. For example, such empty items which merely draw blood or other body fluids for diagnostic purposes are not exempt because they do not deliver prescription drugs to patients.

Non-exempt items also include those used for the drawing of blood into needles and tubing to obtain plasma for vaccines even when the red blood cells are later returned to the donor by the same

tubing and needles. Again, the procedure does not deliver a prescription drug to the donor. Another reason such tubing and needles are taxable is because this procedure is not for the diagnosis, cure, mitigation, treatment or prevention of disease or other ailment in the donor. WAC 458-20-18801(5)(d).

In contrast, we treat differently needles, syringes, vials or tubing used to draw blood or other body fluids when such containers hold a prescribed reagent or other prescribed chemical for diagnostic purposes. Prescribed reagents are exempt from sales and use taxes. Deaconess, 58 Wn. App. 783, supra. Therefore, the containers holding them when withdrawing the body fluids are exempt as well.

DURABLE MEDICAL GOODS - Pumps, Machines, Parts, Computers, Medical Gas Cylinder Tanks, Hoses, etc.:

[3] Such items are not exempt from sales or use taxes if they are sold to hospitals and not resold to patients. Usually, a hospital does not buy such equipment because it has been prescribed for a specific patient. Furthermore, the patient normally does not buy the equipment. Instead, hospitals use such items for any and all patients who need them as part of the hospitals' durable medical or surgical equipment, such as heart-lung machines. Even if a hospital sells such an item to a patient, sales tax is owing unless the item is statutorily exempt. See Deaconess, 58 Wn. App. 783.

Included in these non-exempt items are hoses or tubes which run from a hospital's wall outlets to medical gas cylinders or from cylinder to cylinder. By contrast, tubes which are directly attached to patients for delivering medically-prescribed gases (anesthesia or oxygen, for example) or liquid drugs from IV sets are exempt, as discussed in 11 WTD 431.

#### CATHETERS AND PORTS:

In 11 WTD 431, we found as tax exempt various catheters, drains, tubes, suction devices, cannulae and similar drainage items which either replaced missing body parts or assisted dysfunctional ones. Since then, the taxpayers have raised questions about other types of catheters.

[4] We understand catheters are used one time only and then are discarded. In addition to arterial catheters used in angioplasty and arthroscopic catheters, there are also venous and peritoneal ones, among others. For example, some catheters primarily deliver chemotherapy drugs to cancer patients. Others deliver morphine to patients with intractable pain. Under the Deaconess

(Superior Court), supra, these and similar types of catheters which deliver prescribed drugs are exempt.

The angioplasty catheter is inserted in an artery in the groin area and is guided to the heart where a balloon is inflated to expand the narrowed or blocked section. Its purpose is to improve a body function, like surgery does, but it is frequently used instead of surgery. If that is all the catheter does, it is not exempt because it does not deliver drugs or replace body parts or their functions.

However, we understand such single-function catheters are seldom used in angioplasty or other complex procedures. Presently, many catheters are made to perform from two to four functions at the same time. For example, in addition to stopping blood flow, widening arteries and monitoring, they can also inject prescription drugs and contrast media, all during the same operation. It appears such devices are exempt under Deaconess, (Superior Court) supra, because they also deliver drugs and/or contrast media. We emphasize the Department of Revenue requires actual delivery of a prescribed substance in a catheter for it to be exempt.

[5] Catheters can be sold separately. However, hospitals will frequently buy kits or trays which include catheters. The kit also can include a prescription drug, a needle, scalpel, guide wire, two syringes and a port. The Department exempts the entire tray or kit if a prescription drug is included in it, provided the primary purpose of that drug is to diagnose, cure, mitigate, treat, or prevent disease or other human ailments. If the drug is used for auxiliary purposes, the kit is not exempt, although some of its components may be.

For example, if the catheters deliver chemotherapy drugs or morphine, as discussed above, and are purchased as part of a kit containing those drugs, then the whole kit is exempt because those drugs serve the primary purpose to cure or treat or mitigate, etc. By contrast, if the kit's prescription drug is used merely to numb the area where the catheter is inserted, then the kit is not exempt because that drug itself does not diagnose, cure, mitigate, treat or prevent disease or other human ailments. However, some of the kit's components are or might be exempt. For example, the prescription drug used to numb the area, along with the syringe and needle delivering it, would be exempt. Likewise, the catheter would be exempt if it delivers another prescription drug.

BITE STICKS:

[6] These items do not deliver prescribed medicines. Therefore, they are not entitled to the prescription drug exemption which IV sets or medical gas tubing has. The sticks also do not appear to replace a body part or function. For example, they are not drainage devices. Furthermore, unlike some of the tubing discussed in 11 WTD 431, the devices do not appear to keep airways open for patients whose breathing passages otherwise would collapse.

Rather, bite sticks or blocks are used as non-exempt tools or instruments by medical personnel in performing procedures which require patients to keep their mouths partially open for purposes other than preventing airway collapse. An example might be when a dentist has a patient bite on a stick or block in order to take teeth x-rays or to test a bite or the soundness of a molar.

#### DECISION AND DISPOSITION:

The items we have addressed in this supplemental determination shall be treated accordingly for tax reporting and auditing purposes.

DATED this 26th day of February 1992.