

Cite as Det. No. 16-0207, 39 WTD 111 (2020)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 16-0207
)	
... )	Registration No. . . .
)	

RCW 82.08.190(4)(d) – RETAIL SALE – BUNDLED TRANSACTIONS – FIFTY PERCENT NONTAXABLE ITEMS EXCLUSION – Where a transaction that would otherwise meet the definition of a bundled transaction under RCW 82.08.190(1) is not a bundled transaction if the transaction includes certain tangible personal property that are exempt from tax as retail sales, such as drugs or medical supplies, and where the seller’s sales or purchase price of the taxable tangible personal property constitutes fifty percent or less of the total sales or purchase price of the bundled tangible personal property.

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.

Yonker, T.R.O. – A provider of nursing services (Taxpayer) seeks review of a tax assessment of use tax and/or deferred sales tax on various medical “kits” Taxpayer purchased and used in the course of its services without paying retail sales tax or use tax. Taxpayer argues that the kits in question are exempt from retail sales tax and use tax. We deny the petition.<sup>1</sup>

ISSUES

1. Are certain individual items contained in medical “kits” exempt from retail sales tax and use tax under RCW 82.08.935 and RCW 82.12.935?
2. If so, do those exempt individual items remove the purchase of the kits at issue from the general definition of “bundled transaction” under RCW 82.08.190(4)(d), thereby exempting such kits from retail sales tax under RCW 82.08.195(4) and use tax under RCW 82.12.195(4)?

<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

## FINDINGS OF FACT

[Taxpayer] operates a business that provides “physician-prescribed nursing service for delivery of prescribed medication” via intravenous (IV) methods. During the time period at issue, as part of its service, Taxpayer used various types of medical “kits” that it purchased from out-of-state vendors. These kits contained various individual items including “needles, syringe, catheter, introducer, tubing, scalpel, antiseptic, dressing, sutures and gloves.” Not all types of kits contained the same individual items. Taxpayer paid one unit price per kit, and did not pay separately for the individual items contained in the kits. Taxpayer did not pay retail sales tax or use tax on the kits it purchased and subsequently used as part of its services.

In 2014, the Department’s Audit Division conducted a review of Taxpayer’s books and records for the time period of January 1, 2011, through September 30, 2014 (audit period). During the course of that review, the Audit Division found that Taxpayer should have paid use tax and/or deferred sales tax on certain types of kits during the audit period. As a result of the Audit Division’s review, the Department issued a tax assessment for \$ . . . , which included \$ . . . in use tax and/or deferred sales tax, a \$ . . . five-percent assessment penalty, and \$ . . . in interest. Taxpayer sought review of the entire tax assessment.

During the pendency of this review, Taxpayer provided additional documentation to the Audit Division for review. As a result of the Audit Division’s subsequent review of that additional documentation, the Department issued a post assessment adjustment (PAA) reducing the amount of the original tax assessment down to \$ . . . , which included \$ . . . in use tax and/or deferred sales tax, a \$ . . . five-percent assessment penalty, and \$ . . . in interest.

Following the issuance of the PAA, Taxpayer continued to dispute the Audit Division’s findings related to the tax liability on the purchase and use of certain kits. Facts specific to those kits are addressed separately herein:

### 1. PICC Insertion Tray Kits (Items 22A and 22B)

Items 22A and 22B are nearly identical “PICC Insertion Trays,” with the only difference between the two kits being the size of gloves that are included with the kits. These kits contained a large number of individual items, including multiple syringes, multiple needles, lidocaine,<sup>2</sup> heparin,<sup>3</sup> tubing, scissors, tape, gloves, gown, tourniquet, mask, and various other items, used in Taxpayer’s procedure of inserting PICC lines into Taxpayer’s patients.<sup>4</sup> According to information Taxpayer received from its vendor, the total price of all individual items in the kits was \$ . . . for Item 22A and \$ . . . for Item 22B. The taxability of [two] individual items contained in the kits is in dispute here: . . . the tray, and the filter needle.

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<sup>2</sup> Lidocaine is a medication used to numb the tissue in a specific area of the body.

<sup>3</sup> Heparin is a blood thinner.

<sup>4</sup> There was a slight change in the contents of Items 22A and 22B that occurred in June 2013. First, the minibore extension tubing was no longer included in the kits, and, second, beginning in that month, a “towel” was included. These changes are irrelevant to our analysis.

. . .

The tray is a thin, plastic tray with three compartments between which the individual items of the kit are arranged before the kit is sealed. Taxpayer represented that the plastic tray is discarded at the time the kit is opened for use, and is not used as part of any procedure. According to information Taxpayer received from its vendor, the price of the tray was \$ . . . .

According to Taxpayer,

[The] filter needle is attached to any syringe used to aspirate lidocaine out of a glass ampule. Because the glass ampule is broken for access during the procedure, glass fragments fall into the medication. As the lidocaine is aspirated into the syringe for delivery of the medication, the glass particles are filtered by the filter in this needle. The medication is then safe for the healthcare worker to deliver into the patient's body using the attached syringe.

After the filter needle has filtered out the glass particles, the filter needle is removed from the syringe and a different device, such as another needle, is attached to the syringe to deliver the lidocaine to the patient's body. According to information Taxpayer received from its vendor, the price of the filter needle was \$ . . . .

## 2. Introducers (Items 2A, 9A, and 26A)

Items 2A, 9A, and 26A all contain an introducer, which typically consists of a needle, guidewire, and sheath.<sup>5</sup> The general purpose of an introducer is to penetrate the vein and provide a continuous direct pathway to the vein for subsequent introduction of another device, such as a catheter, that then delivers medication to a patient's body. Taxpayer represented that on a case-by-case basis, an introducer may directly deliver medication to a patient's body, particularly in cases of obese patients because the introducer needles are typically longer than the needles included in other types of kits.

## 3. IV Start and Dressing Change Kits (Items 15A, 24A, and 25A)

Items 15A, 24A, and 25A contain various "sterile supplies" that are used as part of an IV procedure. Item 15A contains a Chloraprep swab, gloves, tourniquet, tape, sponges, and a dressing. Item 24A is a "dressing change tray" that includes such things as dressings, drapes, gloves, masks, tape, and other items. Item 25A contains just a "drape sheet." None of these kits include a needle, catheter, or tubing.

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<sup>5</sup> Item 9A only contained a sheath. Item 26A also contained a mini scalpel in addition to the introducer components described above.

## ANALYSIS

Washington imposes retail sales tax on each retail sale in this state. RCW 82.08.020. A “retail sale” is defined as “every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business. . . .” RCW 82.04.050(1)(a). Washington imposes a corresponding use tax on the privilege of using an article of tangible personal property in this state upon which retail sales tax has not been paid. RCW 82.12.020. Thus, in general, either the sale of tangible personal property, or the subsequent use of that property, is subject to taxation unless some specific exemption applies. Here, Taxpayer did not pay retail sales tax or use tax on the kits at issue.

Under RCW 82.08.050(10), if a buyer fails to pay retail sales tax, “the department, may, in its discretion, proceed directly against the buyer for collection” of the retail sales tax. Therefore, absent any specific exemption, the Department had authority to collect either deferred sales tax or, alternatively, use tax from Taxpayer on the kits at issue.

Here, however, Taxpayer claims that the kits at issue were exempt from retail sales tax and use tax. Taxpayer has the burden of establishing its entitlement to any deduction or exemption from tax liability. *See Budget Rent-A-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972) (“Exemptions to the tax law must be narrowly construed. Taxation is the rule and exemption is the exception. Anyone claiming a benefit or deduction from a taxable category has the burden of showing the he qualifies for it”); *see also Lacey Nursing v. Dep’t of Revenue*, 128 Wn.2d 40, 905 P.2d 338 (1995); *Port of Seattle v. State*, 101 Wn. App. 106, 1 P.3d 607 (2000); Det. No. 13-0279, 33 WTD 75 (2014).

Specifically, Taxpayer argues that certain individual items included in the kits were, for various reasons, exempt from taxation. We note that Taxpayer did not individually purchase the individual items it claims are exempt. Instead, Taxpayer purchased the kits containing the individual items for one non-itemized “bundled” price. RCW 82.08.190(1)(a) defines a “bundled transaction” as “the retail sale of two or more products . . . where: (i) [t]he products are otherwise distinct and identifiable; and (ii) [t]he products are sold for one nonitemized price.” RCW 82.08.190(1)(a). There is no dispute that Taxpayer’s purchases of the kits at issue during the audit period were “bundled transactions” under the general definition contained in RCW 82.08.190(1)(a).

Generally, under RCW 82.08.195(1), “a bundled transaction is subject to [retail sales tax] if the retail sale of any of its component products would be subject to [retail sales tax].” *See also* RCW 82.12.195 (stating that “a bundled transaction is subject to [use tax] if the use of any of its component products is subject to [use tax]”).<sup>6</sup> However, RCW 82.08.190(4) provides the following exception to the general definition of “bundled transaction”:

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<sup>6</sup> For brevity, we generally refer to the relevant statutory authorities related to exemptions from retail sales tax, with the understanding that our conclusions apply equally to the equivalent statutory authorities related to exemptions from use tax.

A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

...

(d) The retail sale of exempt tangible personal property and taxable tangible personal property where:

(i) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, all as defined in this chapter, or medical supplies; and

(ii) Where the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.

If these conditions are both met, the transaction is not subject to retail sales tax or use tax. RCW 82.08.195(4); RCW 82.12.195(4).

[In other words, if the retail sale includes any of the items listed in subsection (4)(d)(i) of the statute, the combined purchase or sale price of the taxable items included in the "bundle" must be compared with the combined purchase or sales prices of all the individual items that make up the "bundle." Then, if the combined prices of the taxable individual items amount is less than fifty percent of the total combined prices of all the individual items in the "bundle," that "bundle" is removed from the general "bundled transaction" definition under RCW 82.08.190(1)(a), and is not subject to retail sales tax under RCW 82.08.195(5) or use tax under RCW 82.12.195(4).]

Taxpayer offers two alternative arguments for its position that the kits at issue here are fully exempt from taxation. First, Taxpayer argues that the former version of WAC 458-20-18801 (Rule 18801) in effect throughout the audit period controls our legal analysis, and fully exempts the kits at issue from taxation. Alternatively, Taxpayer argues that even if that former version of Rule 18801 does not control, the current version of Rule 18801 nevertheless also fully exempts the kits from taxation because certain individual items in the kits at issue were either nontaxable over-the-counter drugs or nontaxable medical supplies, and these items made up at least fifty percent of the total combined prices of the kits at issue. We address each argument in turn.

#### 1. Former Version of Rule 18801

Rule 18801 was adopted by the Department in 1972 to administer taxation of prescription drugs, medical devices, and other related items, according to statutory exemptions in existence at that time. Rule 18801 was amended several times before the end of the last century, in 1978, 1983, 1987, and 1992.

In 2003, the Washington state legislature began its efforts to conform Washington laws to the Streamlined Sales and Use Tax Agreement (SSUTA). As a result, it passed the Streamlined Sales Tax Act. *See* Laws of 2003, ch. 168, § 401. Several statutory retail sales tax exemptions related to the sales of prescribed drugs, medical devices, and other related items, were either amended or adopted to conform to the exemptions and definitions contained in SSUTA. For example, RCW 82.08.0281, which provides definitions and a sales tax exemption for the sales of prescription drugs, was amended to conform to SSUTA. Likewise, new statutory tax exemptions were enacted pursuant to SSUTA, such as RCW 82.08.935, exempting single use disposable devices, such as syringes, tubing, or catheters, used, or to be used, to deliver prescription drugs, and RCW 82.08.940, exempting certain over-the-counter drugs prescribed for human use.<sup>7</sup> These various statutory changes became effective July 1, 2004. Laws of 2003, ch. 168, § 903. The legislature later enacted RCW 82.08.190 and RCW 82.08.195, addressing “bundled transactions,” to further conform to SSUTA effective July 1, 2008. Laws of 2007, ch. 6, § 1704.

On September 3, 2003, in response to the pending statutory changes as a result of the legislature passing the Streamlined Sales Tax Act, the Department filed a Preproposal Statement of Inquiry with the Washington State Code Reviser’s Office providing notice that the Department intended to amend Rule 18801. Wash. St. Reg. No. 03-18-120. Rule 18801 was then amended to conform to the SSUTA statutes as of September 25, 2014.

Consequently, the definitions and exemptions provided in the prior version of Rule 18801 that was in effect between 1992 and 2014 were out of date in many instances and even in conflict with the governing statutes during the audit period. Indeed, even before Rule 18801 was amended in 2014, we held that that former version of Rule 18801 “cannot be an independent basis for exempting the sales at issue when there is no statutory basis to do so.” Det. No. 13-0388, 33 WTD 419 (2014); *see also* Det. No. 12-0320, 32 WTD 168 (2013). As such, Taxpayer may not rely on that former version of Rule 18801 in support of its argument.<sup>8</sup>

## 2. Statutory Exemptions and Current Version of Rule 18801

Taxpayer next argues that certain individual items included in the kits at issue were exempt from taxation under RCW 82.08.195 and RCW 82.12.195 because the prices of those individual items represent at least fifty percent of the total price of those kits. Taxpayer’s argument follows that under RCW 82.08.190(4), the kits at issue are not “bundled transactions,” and, in turn, fully exempt from retail sales tax and use tax under RCW 82.08.195(4) and RCW 82.12.195(4), respectively. We address each category of kits in turn.<sup>9</sup> For each category of kits, we address both (1) the exempt

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<sup>7</sup> There are corresponding use tax exemptions in Chapter 82.12 RCW. Again, for brevity, we will limit our discussion to the sales tax exemptions with the understanding that an item that is either exempt or non-exempt for sales tax purposes is similarly exempt or non-exempt for use tax purposes.

<sup>8</sup> Similarly, published determinations, such as Determination No. 91-261, 11 WTD 439 (1992), Determination No. 91-261S, 12 WTD 23 (1993), and Determination No. 95-122, 15 WTD 86 (1995), to which Taxpayer has cited, but that predate the enactment of the SSUTA statutes, are likewise not applicable because they, too, conflict with the statutory provisions of SSUTA.

<sup>9</sup> There is no dispute that some of the items included in the kits qualify as “drugs.” Thus, the requirement set out in RCW 82.08.190(4)(d)(i) is met. However, Audit found that the combined price of the taxable items included in each kit exceeded the fifty percent threshold set out in RCW 82.08.190(4)(d)(ii). Taxpayer is challenging that Audit finding.

status of individual items in dispute within each type of kit and (2) whether the purchases of those categories of kits were ultimately exempt from taxation.

A. PICC Insertion Tray Kits (Items 22A and 22B)

There are [two] individual items that were included in the kits identified as Items 22A and 22B that are in dispute.<sup>10</sup> These items were “insertion trays” that contained a number of individual items. The only difference between the two types of insertion trays was the size of the gloves that were included in the kit. We first address the exempt status of each of those individual items:

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i. Tray

Taxpayer argues that the tray that is included in the kits is neither a taxable item nor a nontaxable item to be considered in the “bundled transaction” analysis. Instead, Taxpayer argues the tray is part of the packaging. RCW 82.08.190, which provides definitions relevant to the “bundled transaction” analysis, indicates that the “distinct and identifiable products” to be considered in the analysis do not include

Packaging such as containers, boxes, sacks, bags, bottles, or other materials such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

RCW 82.08.190(2)(a).

Here, the tray is made of a thin plastic that contains three compartments. At the time of sale, the various individual items in the kits are organized into the three containers, and the entire container is then sealed before sale. According to Taxpayer, the tray is not used as part of any procedure, and is simply discarded at the time of use. We conclude that the tray is an incidental item that has no substantive purpose in the kit except to hold the individual items securely until the time of use. As such, we conclude the tray is “packaging” that should not be considered a “distinct and identifiable product” within the kit, and we, therefore, disregard the tray and its associated price in our calculation of the total combined price of the individual items contained in the kits.

ii. Filter Needle

Taxpayer next argues that the filter needle contained in each kit is exempt under RCW 82.08.935, which exempts “disposable devices used or to be used to deliver drugs for human use, pursuant to a prescription.” RCW 82.08.935 defines “disposable devices used to deliver drugs” as “single use

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<sup>10</sup> For all other individual items included in Items 22A and 22B, the Audit Division and Taxpayer agree on the taxability of those individual items.

items such as syringes, tubing, or catheters.” RCW 82.12.935 provides a virtually identical exemption from use tax on such disposable devices.

The term “deliver” is not defined in RCW 82.08.935. When statutory terms are not defined, the Department applies their “ordinary dictionary meaning.” Det. No. 04-0147, 23 WTD 369 (2004) (citing *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000)). Washington courts have specifically used Webster’s Third New International Dictionary in the absence of other authority. *State v. Glas*, 106 Wn. App. 895, 905, 27 P.3d 216 (2001), *rev’d on other grounds*, 147 Wn.2d 410 (2002) (citing *In re Personal Restraint of Well*, 133 Wn.2d 433, 438, 946 P.2d 750 (1997)).

According to Webster’s Third New International Dictionary, the definition of “deliver” includes, “to send (something aimed or guided) to an intended target or destination”. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 597 (1993). *See* Det. No. 14-0356, 34 WTD 308 (2015) (relying on this dictionary definition of “deliver”). Thus the essential characteristic of exempt devices such as syringes and catheters is that they “send” prescription drugs into the human body. *Id.*

Here, the filter needle is attached to a syringe to “aspirate lidocaine out of a glass ampule” and filter out any glass particles prior to delivering the medication to the patient’s body. Once the medication is safely filtered and in the syringe, the filter needle is removed and discarded. After that, a different device is attached to the syringe. And only then is the medication delivered to the patient’s body through that other device. Thus, we conclude that the filter needle cannot be said to “deliver” drugs for human use because it merely filters drugs before they are ever delivered to the patient’s body through a different device, and, therefore, cannot qualify for exemption under RCW 82.08.935. *See* Det. No. 10-0386, 32 WTD 81 (2013) (holding that certain medical devices that “sealed” blood vessels were not exempt under RCW 82.08.935 because they did not “inject” fluids into the patient’s body).

### iii. Calculation of Taxability of Items 22A and 22B

We [previously] concluded that the filter needle, which was assigned a price of \$ . . . by Taxpayer’s vendor, is taxable. [Furthermore], . . . the tray, which was originally assigned a price of \$ . . . , is “packaging,” and, therefore, not included in the calculation for determining the taxability of the kits.

Based on these amounts, and the prices of the individual items that are not disputed by the parties, we conclude that for Item 22A kits, the total price of all individual items is \$ . . . . Of that total, \$ . . . , or 47.9 percent, is exempt.<sup>11</sup> Similarly, we conclude that for Item 22B kits, the total price of all items is \$ . . . . And of that total, \$ . . . , or 48.6 percent, is exempt.

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<sup>11</sup> This amount includes the minibore tubing, an exempt item, with a price of \$ . . . , even though this item was only included in the kits until June 2013. The result of removing this exempt amount from our calculation would reduce the total percentage of the exempt portion of the kits; therefore, we need not separately calculate the percentage for the portion of the audit period after June 2013. Similarly, we need not add the price of the towel, a taxable item that

Based on the prices that Taxpayer's vendor provided to Taxpayer, the total price of all taxable items in the kits was more than fifty percent of the total price of the kits. Thus, the conditions of RCW 82.08.190(4)(d) are not met, and Taxpayer's purchases of the 22A and 22B kits are "bundled transactions" pursuant to RCW 82.08.190(1)(a) and the full purchase prices of the 22A and 22B kits are subject to deferred sales tax under RCW 82.08.195(1) and RCW 82.08.050(10). Alternatively, Taxpayer's use of the 22A and 22B kits is subject to use tax under RCW 82.12.195(1).

**B. Introducers (Items 2A, 9A, and 26A)**

Taxpayer next claims that kits that included introducers are exempt from taxation. As we previously noted, exempt devices under RCW 82.08.935 must be used for a specific purpose, namely "to deliver drugs for human use." Based on the dictionary definition of "deliver" discussed earlier, in order to qualify for the exemption, the introducer must actually send drugs into the patient's body. As Taxpayer conceded at hearing, the "primary purpose" of the introducer is "to get access to the vein," and once such access is obtained, a separate device is used to then deliver the drugs to the patient's body through the pathway established by the introducer. As such, the introducer cannot qualify as an exempt device under RCW 82.08.935 because it does not actually "deliver" any drugs to the patient's body. *See* 32 WTD 81.

Taxpayer argues that the introducer is an "integral part" of the overall process of delivering drugs intravenously to patients. We do not disagree with Taxpayer's on this point; however, we are not authorized to ignore the express limitation the Legislature saw fit to impose on the exemption of devices used "to deliver" drugs to a patient's body, as opposed to a broader exemption for devices that are merely an "integral part" of delivering drugs.

Because the introducers are either the only individual item, or constitute more than fifty percent of the total combined price of the individual items in these kits, we conclude that since the introducer is not exempt, more than fifty percent of the total combined price of the individual items is taxable. As such, we conclude that Items 2A, 9A, and 26A remain under the general definition of "bundled transactions," and, therefore, remain subject to retail sales tax or use tax.

**C. IV Start and Dressing Change Kits (15A, 24A, and 25A)**

Finally, Taxpayer claims that other kits that did not include any needles, catheters, or tubing were, nonetheless, exempt from taxation under RCW 82.08.935 because they were always used in conjunction with other kits that did include needles. In *Silverstreak, Inc. v. Washington State Dep't of Labor and Industries*, 159 Wn.2d 868, 882, 154 P.3d 891 (2007), the Washington Supreme Court articulated the rule of ejusdem generis canon of statutory construction as follows:

The rule of ejusdem generis requires that general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest similar items to those designated by the specific terms. *Davis v. Dep't of*

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was included in the kit beginning in June 2013, because the addition of that item would also further reduce the total percentage of the exempt portion of the kits.

*Licensing*, 137 Wash.2d 957, 970, 977 P.2d 554 (1999); *Dean v. McFarland*, 81 Wash.2d 215, 221, 500 P.2d 1244 (1972). “[S]pecific terms modify or restrict the application of general terms, where both are used in sequence.” *Davis*, 137 Wash.2d at 970, 977 P.2d 554 (quoting *McFarland*, 81 Wash.2d at 221, 500 P.2d 1244); *see also In re Estate of Jones*, 152 Wash.2d 1, 11, 93 P.3d 147 (2004).

Therefore, devices exempt under RCW 82.08.935 must be similar to, or of the same general class, as syringes, tubing, and catheters, which are the terms explicitly included in that statute. *See* 32 WTD 81 (2013). RCW 82.08.935 does not define syringes, tubing, or catheters.

As we stated earlier, the meaning of undefined statutory terms can be discerned from their dictionary terms. “Syringe” is defined as “a device used to inject fluids into or withdraw them from the body or its cavities.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, 2322 (1993). The same dictionary defines “catheter” as “any of various tubular medical devices designed for insertion into canals, vessels, passageways, or body cavities so as to permit injection or withdrawal of fluids or substances or to maintain openness of a passageway. *Id.* at 353.<sup>12</sup> Thus, the essential characteristic of syringes and catheters for purposes of exemption is that they facilitate the injection of fluids into the human body via insertion into the human body. Items 15A, 24A, and 25A do not contain any individual items that are similar to syringes, catheters, or tubing. Thus, no individual items contained in these kits qualify for exemption under RCW 82.08.935.

Taxpayer argues that because these kits are always used in conjunction with needles or catheters purchased separately, we should consider the kits and the separately-purchased needles and catheters to constitute one “bundle.” This argument contradicts the clear language of RCW 82.08.190(1)(a)(ii), which requires that the “products are sold for *one* nonitemized price” in order to constitute one “bundled transaction.” (Emphasis added). Because these kits were purchased separately from the needles or catheters that were used in the procedures, we cannot consider them together in our analysis.

Taxpayer also argues that RCW 82.08.190(4), which removes from the definition of “bundled transaction,” certain transactions where a service is provided in addition to tangible personal property as part of the same transaction, applies here. We disagree. The “transactions” at issue here are the transactions between Taxpayer and its vendors, not Taxpayer and its patients. When Taxpayer purchased the kits at issue from its vendors, it only received tangible personal property – the kits – and no services from the vendors. The manner in which Taxpayer later incorporates the kits with other services is irrelevant to whether the original purchase constituted a “bundled transaction.”

Because Taxpayer has offered no other basis for exemption of any of the individual items contained in these kits, we conclude that more than fifty percent of the combined prices of the individual items is taxable.<sup>13</sup> As such, we conclude that 15A, 24A, and 25A remain under the

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<sup>12</sup> The definition of “tubing,” at page 2460 of the same dictionary, adds little to the discussion and analysis here, and is therefore not discussed. Tubing is part of the definition of catheter above.

<sup>13</sup> Item 15A includes a “chloroprep swab” which arguably is exempt from taxation under RCW 82.08.940, discussed earlier. We need not analyze whether the “chloroprep swab” qualifies for exemption under that statute because even

general definition of a “bundled transaction,” and, therefore, remain subject to retail sales tax and use tax.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 22nd day of June 2016.

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if it did qualify, the price of the “chloroprep swab” represents only 17 percent of the total price of the kit, and, therefore, making the entire kit subject to taxation.