

Cite as Det No. 11-0129, 32 WTD 100 (2013)

BEFORE THE APPEALS 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. 11-0129
)	
... )	Registration No. . . .
)	Warrant No. . . .
)	
)	Docket No. . . .

RCW 82.08.945 – RETAIL SALES TAX – EXEMPTIONS – KIDNEY DIALYSIS DEVICE. A monitoring device used in kidney dialysis that is an integral accessory and part of the device prescribed to treat renal failure and related conditions is a kidney dialysis device exempt from retail sales tax under RCW 82.08.945.

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.

Dressel, A.L.J. – Seller of kidney dialysis device seeks retail sales tax exemption. Petition granted.<sup>1</sup>

ISSUE:

Are sales of a monitoring device used in kidney dialysis exempt of retail sales tax under RCW 82.08.0283, RCW 82.08.945, WAC 458-20-168, and/or WAC 458-20-18801?

FACTS:

[Taxpayer] sells a monitoring device used in kidney dialysis. On its quarterly Washington state excise tax returns for the third and fourth quarters of 2007 and the first quarter of 2008, Taxpayer claimed an exemption from sales tax on its sales of the device. The Department of Revenue (Department) learned of the claim and disallowed it, subsequently issuing a notice of balance due. . . . Taxpayer appeals.

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

Taxpayer's product is [a] monitoring tool. It analyzes a kidney dialysis patient's blood flow through the kidney dialyzer. . . . The device analyzes the patient's blood . . . . With this tool, the hemodialysis clinician can adjust the dialysis to optimize effective dialysis treatment. . . . The [device] is used only for kidney dialysis. The device has some tubes and connective devices that go with it and that have to be replaced for each patient. The main unit, though, is used for multiple patients.

Use of the [device] is triggered when a patient's physician writes an order, or prescription, specifying the "dry weight" for a kidney dialysis patient as a part of a complete kidney dialysis prescription. The prescription does not specify how the dialysis facility is to achieve the prescribed dry weight. Rather, the health professionals, typically registered nurses, operating the kidney dialysis facility are left with operating flexibility so that they can monitor . . . and speed up or slow down the system to obtain the prescribed dry weight outcome. The nurses use Taxpayer's equipment to monitor characteristics of the patient and the kidney dialysis process, which allows the nurses to adjust the kidney dialysis treatment to safely and efficiently obtain the dry weight prescribed by the physician. . . .

#### ANALYSIS:

The Department's Taxpayer Account Administration Division (TAA) disallowed Taxpayer's claimed deduction, reasoning that the [device] is durable medical equipment, which is not deductible from retail sales tax according to RCW 82.04.0283, which reads, in part:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, and the components of such prosthetic devices; . . .

(3) The exemption in subsection (1) of this section shall not apply to sales of durable medical equipment, other than as specified in subsection (1)(c) of this section, or mobility enhancing equipment.

(4) The definitions in this subsection apply throughout this section. . . .

(b) "Durable medical equipment" means equipment, including repair and replacement parts for durable medical equipment that:

- (i) Can withstand repeated use;
- (ii) Is primarily and customarily used to serve a medical purpose;
- (iii) Generally is not useful to a person in the absence of illness or injury; and
- (iv) Is not worn in or on the body.

We agree that the [device] is durable medical equipment. However, there is another exemption statute that is pertinent. RCW 82.08.945 reads, in part:

**Exemptions -- Kidney dialysis devices.**

The tax levied by RCW 82.08.020 shall not apply to sales of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices.

The [device] is a kidney dialysis device.<sup>2</sup> It aids in the process of kidney dialysis. [It] is attached to a kidney dialyzer and analyzes the blood . . . . Based on the readings . . . , the dialysis nurse or technician can adjust the treatment so as to maximize the benefit of the kidney dialysis process in cleansing the patient's blood.

Although the [device] may fit the definition of durable medical equipment, . . . the definition in RCW 82.08.945 is more specific. The [device] is a kidney dialysis device. It is used for no other purpose.

Regarding the prescription aspect of the statute, its first sentence reads, “[t]he tax levied by RCW 82.08.020 shall not apply to sales of kidney dialysis *devices*, including repair and replacement parts, for human use pursuant to a prescription.” (Italics ours.) In this case, the [device] is used, as an integral part of or accessory to the dialyzer, to achieve the proper blood levels in the dialysis process. *See generally* 21 CFR 876.5820 (Hemodialysis system and accessories: “A hemodialysis system and accessories is a device that is used as an artificial kidney system for the treatment of patients with renal failure. . . .”). Because [device] is an integral accessory and part of the device prescribed to treat renal failure and related conditions, it is a covered device.

We conclude that RCW 82.08.945 applies and that Taxpayer's sales of the [device] are exempt of retail sales tax because the product qualifies as a kidney dialysis device.

**DECISION AND DISPOSITION:**

Taxpayer's petition is granted.

Dated this 18<sup>th</sup> day of April, 2011.

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<sup>2</sup> When a term is used but not defined in a statute, it must be given its usual and ordinary meaning, usually ascertained from dictionaries. *Marino Property v. Port of Seattle*, 88 Wash.2d 822, 833, 567 P.2d 1125 (1977). According to *The American Heritage Dictionary* (Second College Edition 1982), the first definition of “device” is “[s]omething devised or constructed for a particular purpose, esp. a machine used to perform one or more relatively simple tasks.” While the tasks performed by the [device] are not simple, it was devised or constructed for a particular purpose, namely, to analyze blood during the process of kidney dialysis.