M e m o r a n d u m   425.0234

To   :   Mr. Robert Roos   Date: May 9, 1995
               Oakland District Auditing - CH

From :   John L. Waid
               Tax Counsel

Subject: SY -- XX-XXXXXX, SY -- XX-XXXXXX, SY -- XX-XXXXXX
               Use of Catheters Post-Surgically

       I am answering your memorandum to me dated March 3, 1995. I apologize for the delay.
You ask whether or not the post-surgical use of a drainage catheter which is also used to drain
waste during surgery renders the sale of the catheter exempt from tax under
Regulation 1591(b)(4) or (5). You ask if there is a time frame for post-surgical use under which
we would consider the catheter as being used during surgery and after which we would
determine the use to be post-surgery. You indicate that a memorandum from Robert Fields to
the taxpayer suggests a period of 24 hours as the dividing line.

OPINION

       We have previously determined that catheters which are used during surgery for drainage
purposes and which also remain with the patient for such use post-surgically may qualify for the
above exemptions. We have also previously rejected Mr. Fields' suggestion of a 24-hour
dividing line for post-surgical use. It is enough that the catheter is intended to remain with the
patient for some indefinite period. For example, surgery for hemorrhoids causes the urinary
sphincter to close up. As a result, a urinary catheter is inserted prior to the surgery and remains
with the patient until such time as he recovers control of the sphincter. We would consider the
catheter to qualify as a medicine under Regulation 1591(b)(5) because it assists the patient with a
natural function post-surgically even though, should the patient recover function quickly, it
could be removed less than 24 hours after the surgery.

       We would distinguish this example from that where the catheter used during surgery is
intended to, and does, remain with the patient for only a short period of time and is replaced by a
longer-term catheter or is not replaced. This is of necessity a judgment call, and no hard and fast
rule can be applied.

JLW:sr