

M e m o r a n d u m**425.0025.500**

To: Mr. Lynn E. Bjorklund

Date: March 10, 1994

From: John L. Waid
Tax Counsel

Subject: Closed Wound Tracheal Suction System

I am responding to your memorandum dated January 4, 1994, to the Legal Division regarding the application of sales tax to this taxpayer's sales of a closed wound tracheal suction system. You attached to your memorandum a copy of a letter to the District dated October 19, 1994, from the taxpayer's Purchasing Manager, X-----, requesting advice on its sales of such systems. X----- was of the opinion that the systems might be exempt as medical oxygen delivery systems. You attached copies of the brochures describing the system that X----- attached to his letter.

You indicated that the Legal Division has previously determined that such systems qualified as medicines under Regulation 1591(j) the sales of which were exempt when used the systems were used in the manner and for the purposes set forth in the regulation, attaching a copy of a letter dated December 14, 1981, from Senior Tax Counsel Mary C. Armstrong, stating to that effect. You further indicated that the instant system "is used post-surgically and it does keep the patient alive, but it is used only two or three days at a time before it has to be changed and a new one [unreadable]." You appear to be asking if such a system must remain with the system permanently in order to qualify for the 1591(j) exemption.

OPINION

Regulation 1591(j) declares that "any appliances and related supplies necessary as the result of any surgical procedures by which an artificial opening is created in the human body for the elimination of natural waste, shall be deemed dispensed on prescription within the meaning of [Regulation 1591(a)]." There is no requirement that the device be permanently attached or implanted. We would have to import such a concept from sub-division (b) (1).

Section 6369(g), which Regulation 1591(j) interprets and implements, does not require that such devices be used on a permanent basis. To import such language into sub-division (j) would be to impermissibly limit the reach of the statute beyond the restrictions that the plain language of the statute implies. Thus, we conclude that, to qualify under Regulation 1591(j), the device need not be permanently attached as that term is understood under Regulation 1591(b) (2).

JLW:es