

Memorandum

To : Mr. Donald Herrmann (MIC:39)
Senior Tax Auditor
Audit Review & Refund Section

Date: October 24, 1995

From : John L. Waid
Senior Staff Counsel

Subject: S- -- XX-XXXXXX
PolyMem Dressing

I am answering your memorandum to the Legal Division dated September 11, 1995. You ask for an opinion regarding the application of sales tax to the taxpayer's sales of Ferris PolyMem Dressings ("PolyMem"). You attached to your memorandum a Claim for Refund dated August 22, 1995, from Ms. [S] of the taxpayer, and a letter dated September 5, 1995, from Ms. [S] to you (plus attached flyers) that more fully describe PolyMem.

Ms. [S] described the taxpayer's business and the nature of PolyMem as follows:

"PolyMem Dressings are a combination of clear, breathable film bonded to polyurethane foam. The foam portion of the dressing is impregnated with 1) a starch co-polymer derivative for extra absorption, 2) some glycerin for moisturization, and 3) a surfactant which acts as a wound cleansing agent. The glycerin and surfactant are water soluble, and are released from the dressing as fluid is absorbed. Excess wound fluid is almost instantly absorbed because of the action of the absorptive co-polymer.

"My business, [B], is a contracted dealer for Ferris PolyMem Dressings in Northern California. We sell directly to both retail and to wholesale accounts. Retail accounts include acute care hospitals, skilled nursing facilities and home health care agencies, as well as a small number of individual patients referred to us by physicians. Wholesale accounts are generally medical supply houses, pharmacies and DMEs that carry our product. The retail accounts are all charged sales tax, but the wholesale accounts are not taxed. [B] also does a very small amount of Medicare Part B and private insurance billing for patients who have prescriptions for our wound product."

One of the flyers describes the PolyMem as being four products in one. It is made of a biocompatible and absorbent polyurethane base which contains "F68 surfactant" (surface-acting agent) to cleanse the wound, glycerin to moisturize and soften "necrotic" (dead) tissue and provide non-adherent release from the skin, superabsorbent polymer to draw, absorb and hold exudate (any fluid that has exuded out of a tissue or its capillaries, more specifically because of injury or inflammation (such as a scab over a skin abrasion) away from the wound. PolyMem provides "Autolytic debridement" (excision of devitalized tissue and foreign matter from a wound). It also contains moisturizing and cleansing agents that help the wound release necrotic tissue, i.e. slough (separation of necrosed tissue from the living structure) and eschar (a thick, coagulated crust or slough which develops following a thermal burn or physical cauterization of the skin). (Definitions from Stedman's Medical Dictionary (25th ill. ed. 1990).)

OPINION

As you know, Regulation 1591(c)(2) lists "bandages and dressings" as one of the items excluded from the definition of "medicines." However, we have previously determined that the Legislature did not intend to include within this exclusion bandages and dressings impregnated with medicines for the purpose of medicating. (See Annot. 425.0531(1) (12/7/77).) However, where the material with which the dressing is impregnated appears to be intended only to impart certain characteristics to the dressing itself, the dressing does not qualify as a medicine.

Although the product description is unclear, it appears from the description quoted above that the primary purpose of the glycerin and F68 surfactant is to draw fluids out of the wound, permit the release of the scab and to prevent the dressing from adhering to the wound itself. We have previously determined that such characteristics are designed to make the dressing work better. They do not provide treatment for the wound over and above that provided by non-medicated dressings. Therefore, we conclude that, absent further information regarding the properties of the F68 surfactant (we have not been able to identify that agent) sales of PolyMem are subject to tax.

JLW:sr

cc: --- --- District Administrator - --