

Cite as Det. No. 13-0388, 33 WTD 419 (2014)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of ) D E T E R M I N A T I O N  
Assessment of )  
 ) No. 13-0388  
... )  
 ) Registration No. . . .  
 )  
 )

[1] RCW 82.08.935: RETAIL SALES TAX – EXEMPTION – PRESCRIPTION DRUGS – DELIVERY EQUIPMENT – DISPOSABLE – REUSABLE – DRUG INFUSION PUMPS: Sales of reusable drug infusion pumps and modules were not exempt under RCW 82.08.935 because they were not disposable, but reused.

[2] RCW 82.08.0283: RETAIL SALES TAX – EXEMPTION – PROSTHETIC DEVICE – DURABLE MEDICAL EQUIPMENT – REUSABLE – INFUSION PUMP: Reusable bedside programmable drug infusion pumps are not exempt from retail sales tax as prosthetic devices.

[3] RULE 18801; RETAIL SALES TAX – EXEMPTION – REUSABLE DURABLE MEDICAL EQUIPMENT: Rule 18801 cannot be an independent basis for exempting the sales of reusable durable medical equipment when there is no statutory basis to do so.

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.

M. Pree, A.L.J. – A vendor of medical equipment protests the assessment of retail sales tax on its sales of programmable drug infusion pumps. Because the pumps were reused as durable medical equipment, and not worn in or on the patient's body as a prosthetic device, their sale was not exempt under current Washington statutes. Petition denied.<sup>1</sup>

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

## ISSUES

1. Does RCW 82.08.935 exempt from retail sales tax, the sale of reusable programmable drug infusion pumps as devices used or to be used to deliver drugs?
2. Does RCW 82.08.0283 exempt the sale of bedside programmable drug infusion pumps as prosthetic devices?
3. Does WAC 458-20-18801 (Rule 18801) exempt the sale of programmable drug infusion pumps?

## FINDINGS OF FACT

[Taxpayer] is a limited liability company located outside of Washington. The taxpayer sells medical equipment and products to Washington hospitals and clinics. The taxpayer did not charge the hospitals and clinics retail sales tax or remit the sales tax to the Washington Department of Revenue (Department) on its Washington sales of infusion pumps.<sup>2</sup>

The Department's Audit Division conducted a partial audit for the period of January 1, 2009 through December 31, 2012, with the objective of verifying that selected Washington State business activities and transactions were properly reported on the taxpayer's excise tax returns.<sup>3</sup> On July 24, 2013, in Document No. 201400965,<sup>4</sup> the Audit Division assessed \$... in additional retail sales tax.<sup>5</sup> The taxpayer appealed.

In its petition, the taxpayer contests the retail sales tax assessed on its charges for drug infusion pumps. According to the taxpayer, after a doctor orders prescription drugs for a patient, nurses program the pumps to deliver the drug to the patient. They hang the infusion pumps on a bedside pole above the patient. The pumps deliver the prescribed medications through a tube and catheter into the patient's body.

The infusion pumps are stationary pumps with software and display features that have been designed to reduce drug administration errors and help promote safe, timely delivery of medications. The taxpayer sold the pumps at issue<sup>6</sup> as a package with catheters, tubing, and a programmable display unit, which the nurse would program to dispense drug and saline solutions according to the physician's prescription.

<sup>2</sup> The taxpayer paid \$... in taxes with its combined excise tax returns during the audit period.

<sup>3</sup> Because the partial audit did not include a detailed examination of the business' accounting records, the assessment was qualified to allow a future audit covering all areas of possible taxation within the statutory period as addressed in RCW 82.32.050.

<sup>4</sup> The Audit Division also issued a second assessment, Document No. 201400961 with undisputed adjustments. That assessment totaled \$... and was paid by the taxpayer.

<sup>5</sup> In addition to the tax, the July 24, 2013 assessment included \$... in interest and totaled \$. . . . Because the taxpayer had paid over 80% of the total tax with its excise tax returns, the 5% assessment penalty was not assessed.

<sup>6</sup> A single charge of \$... on Workpaper A was for the . . . pump module, which can be viewed at: [Taxpayer's website]. Workpaper A represented sales of infusion and dispensing devices with \$. . . in taxable sales for the sample block period, which was used to project taxable sales throughout the audit period.

. . .<sup>7</sup> After they were used to treat the patient, the tubing and catheters were discarded, and not reused. The pumps, however, were reprogrammed and used with other patients.

The Audit Division did not consider the charges for the infusion pumps exempt because the disputed devices were not worn on or in the body of a patient. The taxpayer contends that there is no requirement that exempt medical devices be worn on the body.

## ANALYSIS

. . . Washington laws [were amended] to conform to the Streamlined Sales and Use Tax Agreement (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, RCW 82.08.0283, with definitions and a tax exemption for sales of certain medical items, was amended to conform to SSUTA. The legislature enacted other statutory tax exemptions to SSUTA, including RCW 82.08.935 (sales of single use disposable devices, such as syringes, tubing, or catheters, used or to be used to deliver prescription drugs).<sup>8</sup>

The audit period began on January 1, 2009, which is after the date the SSUTA statutes took effect in Washington. Consequently, we base our analysis on SSUTA and its Appendix L (Health Care Item List, Completion Date: June 2, 2006), Appendix M (Health Care Item list, Revision Date: January 29, 2007), and the Streamlined Sales Tax Governing Board Section 328 Taxability Matrix Library of Definitions for Washington, as amended through August 1, 2013. SSUTA member states must adopt the definitions in the SSUTA Library of Definitions without qualifications, except those allowed by SSUTA. Det. No. 09-280, 29 WTD 80 (2010). *See also N. Cent. Wash. Respiratory Care Servs., Inc. v. Dep't of Revenue*, 165 Wn. App. 616, 641-43, 268 P.3d 972 (2011).

We will discuss two exemption statutes: RCW 82.08.935 that exempts prescription drugs and delivery equipment, and RCW 82.08.0283 that provides a sales tax exemption for certain medical items, including prosthetic devices.

Sales of disposable devices, such as syringes, tubing, and catheters, used or to be used to deliver drugs for human use pursuant to a prescription are exempt from sales tax under RCW 82.08.935, which provides, “The tax levied by RCW 82.08.020 shall not apply to sales of disposable devices used or to be used to deliver drugs for human use, pursuant to a prescription. ‘Disposable devices used to deliver drugs’ means single use items such as syringes, tubing, or catheters.” The taxpayer’s sales of the pumps and modules are not exempt under RCW 82.08.935 because they were not disposable, but reused.

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<sup>7</sup> . . .

<sup>8</sup> Other statutory tax exemptions were enacted pursuant to SSUTA, such as RCW 82.08.925 (prescribed dietary supplements); RCW 82.08.940 (over-the-counter drugs prescribed for human use); and RCW 82.08.945 (prescribed kidney dialysis devices.). There are corresponding use tax exemptions in Chapter 82.12 RCW. 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.

RCW 82.08.0283(1) provides a sales tax exemption for certain medical items, including prosthetic devices and medically prescribed oxygen. But the exemption in subsection (1) does not apply to sales of durable medical equipment. RCW 82.08.0283(3).

(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 on or in the body.

RCW 82.08.0283(4). The taxpayer’s infusion pump is taxable as durable medical equipment because it can withstand repeated use, and is in fact re-used. It is used primarily and customarily for a medical purpose. It is not useful to a person in absence of illness or injury. Finally, it is not worn on or in the body. RCW 82.08.0283(3) and (4)(b). Moreover, Appendix L (Health Care Item List completed June 2, 2006),<sup>9</sup> p. 8, provides that programmable drug-infusion pumps are durable medical equipment.

The above-referenced statutes are exemption statutes. In general, exemptions from a taxing statute must be narrowly construed. Det. No. 08-0050, 27 WTD 189 (2008) (citing *Budget Rent-A-Car, Inc. v. Dep’t of Revenue*, 81 Wn.2d 171, 174, 500 P.2d 764 (1972); *Evergreen-Washelli Mem’l Park Co. v. Dep’t of Revenue*, 89 Wn.2d 660, 663, 574 P.2d 735 (1978)) and *N. Cent. Wash. Respiratory Care*, 165 Wn. App. at 625. The taxpayer claiming a tax exemption has the burden of proving that he or she qualifies for it. 27 WTD 189 (citing *Group Health Coop. of Puget Sound, Inc. v. State Tax Comm’n*, 72 Wn.2d 422, 433 P.2d 201 (1967)). Taxation is the rule; exemption is the exception. 27 WTD 189 (citing *Spokane County v. City of Spokane*, 169 Wn. 355, 358, 13 P.2d 1084 (1932)).

There is no statutory authority exempting the infusion pumps sold by the taxpayer. The pumps are durable medical equipment, reused by the hospitals. We conclude that the Audit Division properly assessed retail sales tax when the taxpayer sold these pumps in Washington.

Finally, the taxpayer contends that despite the lack of statutory authority exempting the sales at issue, Rule 18801 applies . . .

However, . . . Rule 18801 cannot be an independent basis for exempting the sales at issue when there is no statutory basis to do so.<sup>10</sup> Therefore, Rule 18801 is not applicable to this appeal.<sup>11</sup>

<sup>9</sup> See Streamlined Sales and Use Tax Agreement, June 2, 2006 Health Care Item List, [http://www.streamlinedsalestax.org/uploads/downloads/Appendix\\_L\\_AD06002\\_Health-Care\\_List\\_June\\_2002-2006.pdf](http://www.streamlinedsalestax.org/uploads/downloads/Appendix_L_AD06002_Health-Care_List_June_2002-2006.pdf)

<sup>10</sup> See *Coast Pac. Trading, Inc. v. Dep’t of Revenue*, 105 Wn.2d 912, 917 (1986).

**DECISION AND DISPOSITION**

Taxpayer's petition is denied.

Dated this 17<sup>th</sup> day of December, 2013.

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<sup>11</sup> Similarly, published determinations, such as Det. No. 91-261, 11 WTD 439 (1991) and Det. No. 91-261S, 12 WTD 23 (1993) and others that pre-date enactment of the SSUTA statutes, also are not applicable because they, too, conflict with provisions of SSUTA.