

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of )  
 ) DOCKET NO. 18420  
[Redacted] )  
 ) DECISION  
 )  
 )  
\_\_\_\_\_ )

On October 13, 2004, the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer). The Notice proposed additional use tax and interest in the total amount of \$2,476 for the period of April 1, 2003 through July 31, 2004. The taxpayer filed a timely appeal and petition for redetermination on November 5, 2004.

In its petition, the taxpayer requested a redetermination of the deficiency based on Idaho tax statutes and administrative agency rule interpretations. The Commission held an informal hearing with the taxpayer's attorney on February 3, 2005.

The taxpayer is a [Redacted]. The Commission's Managed Audit Program staff reviewed the taxpayer's purchases and noted several purchases of items used by the taxpayer during surgical procedures. The specific items at issue are [Redacted] that doctors [Redacted]. Doctors then use the [Redacted] to guide the laser to the correct position and to prevent the [Redacted] during the procedure.

The taxpayer contends that these purchases are exempt pursuant to Idaho Code § 63-3622N:

**63-3622N. PRESCRIPTIONS.** -- (a) There are exempted from the taxes imposed by this chapter the following when administered or distributed by a practitioner licensed by the state under title 54, Idaho Code, to administer or distribute such items or when purchased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner licensed by the state under title 54, Idaho Code, to prescribe such items:

- (1) Drugs, hypodermic syringes, insulin, insulin syringes,

artificial eyes, hearing aids, and hearing aid parts and accessories;

- (2) Drugs and supplies used in hemodialysis and peritoneal dialysis;
- (3) Braces and other orthopedic appliances;
- (4) Dental prostheses and other orthodontic appliances, but not including fillings;
- (5) Catheters, urinary accessories, colostomy supplies, and other prosthetic devices which shall include, but is not limited to, enteral and parenteral feeding equipment and supplies, (tubing, pumps, containers) catheter devices and supplies, but not including eyeglasses and contact lenses;
- (6) Equipment and devices or chemical reagents which are used to test or monitor blood or urine of a diabetic;
- (7) Other durable medical equipment and devices and related parts and supplies specifically designed for those products which shall include, but is not limited to: oxygen equipment, oxygen cylinders, cylinder transport devices (sheaths, carts), cylinder stands, support devices, regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxygen base dispenser, liquid oxygen portable dispenser, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, oxygen fittings and accessories, respiratory therapy equipment, room humidifiers, aspirators, aerosol compressors (stationary and portable), ultrasonic nebulizers, volume ventilators, respirators and related device supplies, percussors, vibrators, IPPB, circuits, devices and supplies, air oxygen mixers, manual resuscitators, nebulizers, tubing, emergency oxygen delivery units, patient care equipment, physical and occupational therapy items, hospital beds, trapeze bars and bar stand, bed rails, geriatric chairs, lift recliners, bedside commodes, overbed tables, patient lifts, patient lift slings, traction stands and pulleys, shower seating, shower grip bars, raised toilet seats, toilet safety frames, walking canes, quad canes and accessories, walkers, wheeled walkers, walker accessories, I.V. stands, crawlers, posture back supports for seating, posture back supports, wheelchairs, crutches, crutch pads, tips, grips, restraints, standing frame devices and accessories, hand exercise equipment and putty, specially designed hand utensils, leg weights, paraffin baths, hydrocollators, hydrotherm heating pads, communication aids for physically impaired, specialized seating, desks, work stations, foam wedges, writing and speech aids for the impaired, dressing aids, button loops and zipper aids, grooming aids, dental aids, eating and drinking aids, splints, holders, household aids for the impaired, shampoo trays, reaching aids, foam seating pads, decubitus seating pads, bed pads, fitted stroller, alternating pressure pads and pumps, stethoscope, sphygmomanometers, otoscopes, sitting and sleeping cushions, patient transport devices, boards, stairglides, lifts in home, transcutaneous nerve stimulators, muscle stimulators, bone fracture therapy devices.

(b) The term "practitioner" means a physician, surgeon,

podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter.

(c) The term "drug" means a drug which is:

(1) Defined in section 54-1705, Idaho Code, and

(2) Either:

(i) listed in a drug compendia which the state board of pharmacy requires to be maintained by Idaho licensed pharmacies, or

(ii) the use of which requires a prescription under state or federal law. The term shall not include articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man.

(d) The term "durable medical equipment" means equipment which:

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to a person in the absence of illness or injury; and

(4) Is appropriate for use in the home.

(e) The term "prosthetic device" means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to such devices.

The taxpayer argues that the items are "prosthetic devices" as defined in subsection 63-3622N(a)(5). The issue, therefore, is purely one of statutory interpretation. The statute in question was enacted in 1990 and is clearly derived from elements of a statute and administrative rule from the state of Virginia, although it is not identical to either. See VR § 58.1-609.7 (repealed as of July 1, 2004) and 23 VAC 10-210-940.

Subsection 2 of VR § 58.1-609.7 states that the exemption applies to sales and purchases of:

2. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment and devices, and related parts and supplies specifically designed for those products; and insulin and insulin syringes, and equipment, devices or chemical reagents which may be used by a diabetic to test or monitor blood or urine, when such items or parts are purchased by or on behalf of an individual for use by such individual.

Thus, the Virginia statute upon which the Idaho statute is based includes [Redacted] and prosthetic devices in a large group of different items related to health care. It is not clear why the Idaho legislature chose to include the words “catheter,” “urinary accessories,” and “enteral and parenteral feeding equipment in a separate subsection that appears to be meant to apply to prosthetic devices only. One dictionary defines “catheter” merely as “a tubular medical device for insertion into canals, vessels, passageways, or body cavities usually to permit injection or withdrawal of fluids or to keep a passage open.” *Merriam-Webster's Medical Dictionary*, © 2002 Merriam-Webster, Inc. While the Commission acknowledges that it is possible for a catheter to be used as a prosthetic device in some instances, the Commission does not believe that the exemption applies to all purchases of catheters by health care providers.

An even more determinative factor is whether it is the patient that actually uses the items in question. The Virginia administrative rule points out that, in order to qualify for the exemption, the items must be “purchased by or on behalf of” an individual. The Idaho statute adds the further requirement that the item must not only be purchased by or on behalf of an individual but must also be “used by” an individual. The exemption was intended to benefit the patient and not the health care provider. In this case, the taxpayer purchased the items and the doctors used them during surgery and disposed of them afterwards. It is the Commission’s opinion therefore that the items were purchased and used by the taxpayer, not the patient. For this reason, the Commission finds that the taxpayer’s purchases of [Redacted] are taxable.

The addition of interest to the taxpayer’s liability is imposed pursuant to Idaho Code § 63-3045 and is updated to June 30, 2005.

WHEREFORE, the Notice of Deficiency Determination dated October 13, 2004 is hereby

APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,366	\$221	\$2,587

DEMAND for immediate payment of the forgoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]  
[REDACTED]  
[REDACTED]

Receipt No.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]