

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [ REDACTED ] (Petitioner). Petitioner asks whether its sales of collagen wound dressings and collagen membranes intended for use during dental surgery are exempt from State and local sales and use tax (tax) under Tax Law § 1115(a)(4). We conclude that these products are not exempt prosthetic aids under Tax Law § 1115(a)(4), but these products are exempt from tax under Tax Law § 1115(a)(3) where they are consumed by humans for the preservation of health.

**Facts**

Petitioner is a medical products manufacturer. Petitioner's product line includes collagen wound dressings and collagen membranes intended for use during dental surgery.

Collagen wound dressings are soft, white, pliable, non-friable, absorbent sponges made from collagen obtained from bovine deep flexor (Achilles) tendon. These wound dressings are intended for use on moist or bleeding wounds created during dental surgery where a stabilized blood clot can help control bleeding and protect the surface of the wound from further injury. The wound dressings can be used as temporary dressings prior to surgical closure or left in situs; the collagen wound dressings are totally absorbed by the body in 10 to 14 days.

Collagen membranes are white, compressed, absorbable, non-friable matrices made from collagen obtained from bovine deep flexor (Achilles) tendon. These implantable membranes have the strength to be sutured in place and provide wound stabilization and create space during guided tissue regeneration procedures where an extended resorption profile is desired. The membrane incorporates into the surrounding tissue and is generally absorbed within 4 to 8 weeks, eliminating the need for a second surgery to remove a non-absorbable membrane.

**Analysis**

Tax Law § 1115(a)(4) exempts from tax retail sales of “[p]rosthentic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings.” Under the Sales Tax Regulations (Regulations), for property to qualify as a prosthetic aid, it must be primarily or customarily used to either completely or partially replace a missing body part or the function of a permanently inoperative or permanently malfunctioning body part and not be generally useful otherwise. 20 NYCRR 528.5(b). The collagen wound dressings and collagen membranes do not completely or partially replace a missing body part or the function of a completely inoperative or permanently

