

MID STATE MEDICAL SERVICES, INC. §
1508 MULBERRY STREET
MONTGOMERY, AL 36106, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. S. 07-885

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Mid State Medical Services, Inc. (“Taxpayer”) for State sales tax for December 2003 through October 2006. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on December 11, 2007. Doug Godwin represented the Department. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether certain items sold by the Taxpayer qualify as durable medical equipment, which is exempt from sales tax pursuant to Code of Ala. 1975, §40-9-30. That statute defines “durable medical equipment” as “equipment which can stand repeated use, is used to serve a purpose for medical reasons, and is appropriate and suitable to use in the home.” Section 40-9-30(a). The items in question serve a medical purpose and are suitable for home use. The issue thus turns on how the phrase “can stand repeated use” should be interpreted.

The Taxpayer sells medical-related items to Medicaid recipients. The Department audited the Taxpayer and determined that the Taxpayer had incorrectly failed to collect sales tax on the following items – diabetic test strips and lancing devices and lancets used to draw blood for test purposes, T.E.N.S. electrodes, diabetic shoes and inserts, and

C.P.A.P. full and half face masks, headgear chin straps, and tubing used by sleep apnea and other sleep disorder patients. It assessed the Taxpayer accordingly.

The Department argues that the items are not durable equipment, but rather are one-time use or otherwise perishable supplies.

The Taxpayer contends that most of the items can be used repeatedly, and thus are durable equipment for purposes of the exemption. The Taxpayer concedes that the test strips and lancets used by diabetic patients cannot be reused, but that they also should be exempt because they are required for the durable blood testing device to work properly.

“Durable” is defined by the American Heritage College Dictionary, Fourth Ed. at 435, as “Not depleted or consumed by use. A durable manufactured product, such as an automobile.” Durable goods or products are generally considered to be items that may last or be used for years, i.e., automobiles, washing machines, etc. As indicated, however, §40-9-30(a) defines the term in pertinent part as any “equipment which can stand repeated use,” The above dictionary, at 1179, defines “repeated” as “Said, done, or occurring again and again”; that is, at least more than twice.

The test strips and lancets used by diabetic patients are used only once. Consequently, they are clearly not exempt as durable medical equipment. The fact that they are necessary supplies is irrelevant. The undisputed evidence indicates, however, that the remaining items can be reused repeatedly, i.e., again and again, over a period of months if not longer. Consequently, they can stand repeated use, and thus qualify as exempt durable medical equipment, as defined at §40-9-30(a).

I recognize that a tax exemption should be narrowly construed against a taxpayer and for the government. *Bean Dredging Corp. v. State of Alabama*, 454 So.2d 1009 (Ala.

1984). However, the guiding rule of statutory construction is that the plain language of a statute must control. *Ex parte Kimberly-Clark Corp.*, 503 So.2d 304 (Ala. 1987). If the Legislature had not defined “durable medical equipment,” the term would arguably include only medical devices that are capable of being used for a year or longer. But the Legislature did define the term in §40-9-30(a). That definition controls. Consequently, any device that serves a medical purpose, can be used at home, and can be repeatedly used by the patient qualifies as exempt durable medical equipment.

The Department is directed to recompute the Taxpayer’s liability in accordance with this Order. A Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered December 20, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Doug Godwin
Joe Cowen
Mike Emfinger