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July 2012

Are Adult Toys Taxable?

The word that starts with "s" and ends in "x" is seemingly everywhere in today's society. It's in music, in movies, in advertising and in almost everything else. It can also be the driving factor behind many decisions made every day. But when sold in toy form, is it taxable?



Due to the sensitive nature of this topic (and because the description is entertaining to read), we've decided to directly quote a recent Advisory Opinion issued by the New York State Department of Taxation & Finance addressing this matter. The Advisory Opinion describes the product that the "Petitioner" (a/k/a Taxpayer) sells:

"Petitioner's product is a kegel exercise device. The product is a resistive device used to improve and/or prevent incontinence and promote a healthier female core. The device is portable, resistive and easy to insert, remove and clean. The product is inserted into a user's body and the user will perform kegel muscular contractions against the device to strengthen pelvic floor muscles. The device will aid in strengthening the pelvic floor muscles by keeping them young and healthy to prevent and eliminate incontinence. The device will also increase pleasure and, if used prior to childbirth or pelvic surgery, it will ease childbirth and the recovery of childbirth or pelvic surgery."

http://www.tax.ny.gov/pdf/advisory_opinions/sales/a12_13s.pdf

Whew! I hope my mother doesn't read this month's newsletter.

Anyway... the Petitioner wanted to know if this "kegel exercise device" would qualify for the exemption provided to prosthetic devices. NYS Stated that it was not shown that the product "is to be primarily and customarily used for medical purposes" and that "it may be generally useful in the absence of illness, injury or physical incapacity", it was determined that the device did not qualify for the exemption.

So what would qualify as a tax-exempt "prosthetic device"? In short, it would be a device which is used completely or partially to replace the function of a permanently inoperative or permanently malfunctioning body part. However, the New York State Sales and Use Tax Laws do not provide sufficient guidance to determine the exact definition of "disability", nor prescribe a specific form of documentation to be obtained by a seller from a purchaser.

When you're seeking a professional to assist you with a grey area of the tax code, call Sales Tax Defense LLC and we can help you figure it out!

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Which is Taxable which is NOT?

- 1) Ice Tea or Lemonade
- 2) Cup Cakes or Candy
- 3) A defensive driving course taking a limousine to the airport
- 4) Taking a karate class or hiring a body guard
- 5) Dandruff Shampoo or Mouth Wash
- 6) A dress or a handbag
- 7) A Tractor Trailer or a Dump Truck
- 8) Installing computer software or installing computer hardware
- 9) Dry cleaning your suit or having your office cleaned
- 10) Giving a massage or getting a massage

If you are not sure of the correct sales tax treatment of any of the above items, please email us at info@SalesTaxDefense.com for the right answer.

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We are a dedicated team of tax professionals who have committed our careers to helping businesses and fellow professionals with tax problems. Since the only work we are focused on is solving tax problems, businesses never have to be concerned that we will try to sell them other services they do not need. And professionals never have to be concerned with us encroaching on their client relationships, because we view you, our fellow professionals, as our client.

