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## Opinion of the Tax Commissioner

Date Issued: July 21, 2005

Opinion No: 05-0003

Tax: Sales

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Subject: Defibrillator

TAXPAYER has requested an Opinion of the Tax Commissioner ("Opinion") pursuant to Ohio Revised Code ("R.C.") section 5703.53.

### FACTS

In support of its request for an Opinion, TAXPAYER provided the following facts:

-Lifepak Cr Plus- This is a battery operated external defibrillator used in cardiac emergencies to correct abnormalities in the heart's electrical system. Would this product be subject to a sales tax regardless of whether or not purchased with a written prescription?

The recent changes with the SSTP definitions in some states have made us ask about the sales taxability on this product.

Attached to the request was additional information regarding the Lifepak Cr Plus including a description, specifications and benefits.

### DISCUSSION AND OPINION

Am. Sub. H.B. 95, effective July 1, 1993, made a number of changes intended to bring Ohio into compliance with the terms of the Streamlined Sales and Use Tax Agreement. The changes included the insertion of definitions into the sales tax section of the Ohio Revised Code for the terms "drug," "prescription," "durable medical equipment," "mobility enhancing equipment," and "prosthetic device." H.B. 95 also modified the sales tax exemptions for drugs and medical equipment found in R.C. 5739.02(B)(18) and (19).

R.C. 5739.02(B)(19) provides the following exemption from sales tax.

Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

There are three basic requirements that must be met for the exemption to apply. First, the item in question must qualify as either a prosthetic device, as durable medical equipment for home, rather than institutional, use or as mobility enhancing equipment. Second, the item must be sold pursuant to a prescription, as defined in R.C. 5739.01(GGG). Third, the item must be used by a human being.

The equipment in question, the Lifepak Cr Plus, qualifies as durable medical equipment. The definition for this equipment is found in R.C. 5739.01(HHH), which states the following:

(HHH) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body.

If the Lifepak Cr Plus is sold pursuant to a prescription for use by a human being for home use, the sale is exempt from tax. Additionally, there are other situations where the sale would be exempt. For example, sales made to nonprofit charitable purpose organizations [R.C. 5739.02(B)(12)] and sales made to the state or any of its political subdivisions [R.C. 5739.02(B)(1)] would qualify for exemption. Other exemptions and exceptions may also be applicable.

It is important to note that there is not a status exemption for the equipment itself. In the examples above, the sale of the equipment is exempt because it is being sold pursuant to a prescription for use by a human being for home use or because the sale qualifies for exemption due to the nature of the entity making the purchase. The general rule is that all sales are presumed taxable in Ohio unless the contrary is established. See R.C. 5739.02(C). When a sale is claimed to be exempt, the customer must supply a properly completed certificate of exemption as required by R.C. 5739.03(B)(1). TAXPAYER is also required to abide by all record keeping requirements and must maintain records of its sales made to consumers under the order of a licensed medical practitioner (a prescription) to establish the claim of exemption.

In summary, it is the opinion of the Tax Commissioner that all sales of the Lifepak Cr Plus are presumed to be taxable unless an exemption or exception applies. However, TAXPAYER, like any other vendor, may sell the equipment without the collection of sales tax in situations where a customer claims an exemption and the customer has supplied a properly completed certificate of exemption. TAXPAYER may also sell the equipment without the collection of sales tax when it is sold pursuant to a prescription for home use by a human being.

This Opinion is limited to the legal issue addressed in this Opinion. This Opinion only applies to the taxpayer and it may not be transferred or assigned. In addition, the tax consequences stated in this Opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the taxpayer to be aware of such changes. See R.C. 5703.53(E).

Sincerely,

William W. Wilkins  
Tax Commissioner