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## Opinion of the Tax Commissioner

Date Issued: June 18, 1992

Opinion No: 92-0002

Tax: Sales

XXXX  
XXXX  
XXXX

Subject: Nursing Home

This request for an opinion of the Tax Commissioner was received on January 13, 1992. The request involves equipment and supplies, and liquid products for enteral feeding. The buyers of these products are nursing homes and the liquid nutritional products are the sole source of nutrition for patients receiving enteral feeding.

XXXX (hereinafter taxpayer) has requested the answer to three questions which will be discussed individually below.

1) Is the sale of liquid nutritional products to a nursing home for enteral feeding of patients exempt from sales tax?

Answer: Yes. The liquid nutritional products are considered as food, and are treated as such under the Ohio Revised Code. Sales of food for consumption off the premises where sold are exempt. The liquid nutritional products are consumed by nursing homes off the premises where sold, and may be purchased without payment of sales tax.

2) Is the sale of pumps, tubes, and related enteral feeding equipment to a nursing home exempt from sales tax?

Answer: No, the nursing home is the consumer of the tangible personal property used in providing the enteral feeding service under R.C. 5739.01(D). The taxpayer's question of whether the transfer of the pumps, tubes, and related enteral feeding equipment is considered to be an exempt sale of a device for supporting a weakened or nonfunctional body part under R.C. 5739.02(B)(19) would be answered in the negative, as 5739.02(B)(19) does not apply to sales to a "medical facility" such as a nursing home.

3) Should a nursing home charge tax to a patient or an insurance company on amounts billed for enteral feeding?

Answer: No, because there is no sale to the resident. The food and equipment is consumed by the nursing home in providing its service to the residents. The nursing home is the consumer of the tangible personal property used in providing the enteral feeding service under R.C. 5739.01(D). Therefore, it is the opinion of the Tax Commissioner that the nursing home should not charge sales tax to the resident or his insurance company for the enteral feeding

services when it bills for them.

R.C. 5739.02(B)(12) exempts sales of tangible personal property or services to nonprofit organizations operated exclusively for charitable purposes in this state. "Charitable purpose" includes the operation of a home for the aged as defined by R.C. 5701.13, and a nursing home which qualifies under this definition as charitable would be able to properly submit a certificate for exemption to its supplier for the enteral feeding devices.

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.

Roger W. Tracy  
Tax Commissioner