

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Bolton Surgical Co., Inc. :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 12/1/72-11/30/75. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1980, he served the within notice of Determination by mail upon Bolton Surgical Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bolton Surgical Co., Inc.  
23-25 Davis Ave.  
Poughkeepsie, NY 12603  
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Bolton Surgical Co., Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 12/1/72-11/30/75. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1980, he served the within notice of Determination by mail upon Conrad Polly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Conrad Polly  
Polly & Shapiro  
222 Station Plaza N.  
Mineola, NY 11501

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
18th day of June, 1980.

*Joanne Knapp*

*J. J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

June 18, 1980

Bolton Surgical Co., Inc.  
23-25 Davis Ave.  
Poughkeepsie, NY 12603

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Conrad Polly  
Polly & Shapiro  
222 Station Plaza N.  
Mineola, NY 11501  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
BOLTON SURGICAL CO., INC.	:	DECISION
	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period December 1, 1972 through	:	
November 30, 1975.	:	

---

Petitioner, Bolton Surgical Co., Inc., 23-25 Davis Avenue, Poughkeepsie, New York 12603, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1972 through November 30, 1975 (File No. 15296).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Bldg. 9, State Campus, Albany, New York, on December 4, 1979 at 1:30 P.M. Petitioner appeared by Conrad Polly, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUES

I. Whether petitioner was required to collect the local sales taxes on its sales in jurisdictions which imposed locality taxes.

II. Whether petitioner's sales of intrauterine devices were subject to tax.

FINDINGS OF FACT

1. Petitioner, Bolton Surgical Co., Inc., operated a surgical supply business, selling primarily to hospitals, nursing homes and doctors.

2. On June 22, 1976, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes

Due against petitioner for the period December 1, 1972 through November 30, 1975 for taxes due of \$5,687.96, plus penalty and interest of \$2,090.76, for a total of \$7,778.72.

3. Petitioner executed a consent extending the time within which to issue an assessment of sales and use taxes for the period December 1, 1972 through August 31, 1973, to December 20, 1976.

4. On audit, the Audit Division, based on an examination of sales invoices for the test months of August 1974, December 1974 and September 1975, determined that petitioner failed to collect tax on the sales of intrauterine devices (IUD) and that such sales amounted to \$8,563.00 for the audit period and asserted sales tax thereon of \$431.04. The audit also disclosed that petitioner failed to collect the local sales tax on sales made in jurisdictions that imposed a local sales and use tax. A margin of error was computed for each jurisdiction affected in the test months and was applied to reported taxable sales for the audit period which resulted in local sales taxes due of \$5,256.92.

5. Petitioner conceded that it was liable for the local sales taxes not collected from the purchaser, except for the sales tax of \$3,179.29 asserted on its transactions with Hamilton Avenue Hospital which is located in Sullivan County.

6. Hamilton Avenue Hospital filed New York State and local sales and use tax returns for the period at issue and reported thereon the local tax imposed by Sullivan County on purchases from petitioner. Petitioner submitted copies of Hamilton Avenue Hospital's returns along with supporting workpapers that identified the vendors, the amount of purchases subject to use tax and the applicable tax due. The amount of purchases listed from petitioner agreed with those determined by the Audit Division for the test months.

7. Petitioner argued that IUDs qualify for the exemption provided in section 1115(a)(3) of the Tax Law for medical equipment and supplies and although said section of the Tax Law became effective September 1, 1976, the Tax Commission is empowered to apply the exemption retroactively.

8. Petitioner acted in good faith at all times and there was no intent to evade the tax.

#### CONCLUSIONS OF LAW

A. That petitioner was expressly required to collect sales tax imposed by a local jurisdiction pursuant to section 1254(a) of the Tax Law; that petitioner failed to comply with said section of the Tax Law and therefore is personally liable for the tax required to be collected in accordance with section 1133(a) of the Tax Law.

B. That although petitioner is liable for the local taxes it failed to collect, Hamilton Avenue Hospital paid such taxes directly to the Tax Commission and that it is not the intention of the Tax Commission to collect tax twice on the same sale. Accordingly, the additional local tax determined by the Audit Division for Sullivan County is reduced to \$87.82 to reflect the deletion of sales made to Hamilton Avenue Hospital.

C. That prior to September 1, 1976, medical equipment and supplies were excluded from the exemption provided in section 1115(a)(3) of the Tax Law (amended by Ch. 201, Laws 1976, effective September 1, 1976 to include medical equipment and supplies), therefore IUD's were subject to tax during the period at issue.

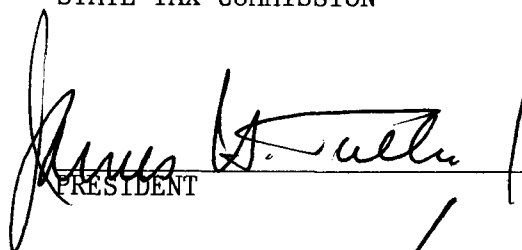
That an IUD is exempt medical equipment under section 1115(a)(3) of the Tax Law effective September 1, 1976, notwithstanding the sale to persons for use in performing medical or similar services for compensation.

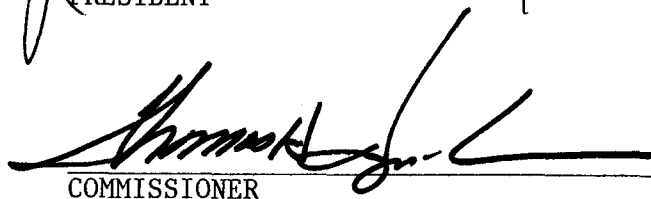
D. That the petition of Bolton Surgical Co., Inc., is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 22, 1976; that the recomputed tax due shall be together with interest computed at the minimum statutory rate; and that, except as so granted, the petition is in all other respects denied.

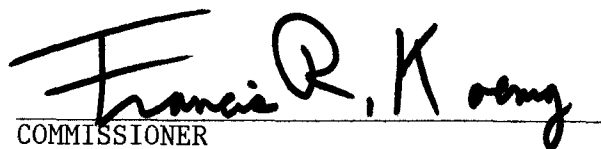
DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER