

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
) OTA Case No. 220811047
HAEMONETICS CORPORATION) CDTFA Case ID: 2-263-899
)
)
)

OPINION

Representing the Parties:

For Appellant: John Rielly, Representative
Rex Halverson, Representative

For Respondent: Kevin Smith, Attorney
Cary Huxsoll, Attorney
Jason Parker, Chief of Headquarters Ops.

For Office of Tax Appeals: Corin Saxton, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Haemonetics Corporation (appellant) appeals the portion of a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)¹ denying appellant’s petition for redetermination of a Notice of Determination (NOD) issued on January 22, 2021. The NOD is for a tax liability of \$948,188, plus applicable interest, for the period October 1, 2015, through September 30, 2018 (audit period).²

Office of Tax Appeals (OTA) Administrative Law Judges Josh Aldrich, Andrew Wong, and Lauren Katagihara held an oral hearing for this matter electronically on November 16, 2023. At the conclusion of the hearing, OTA held the record open for additional briefing. After the

¹ Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, “CDTFA” shall refer to the board.

² The NOD included deficiency measures for disallowed claimed nontaxable separate sales of harness/collection sets (harness sets) and sales of centrifuge bowls (the latter of which CDTFA later removed), unreported taxable sales of parts in connection with optional maintenance contracts, and unremitted tax reimbursement collected. On appeal, appellant only disputes CDTFA’s determination that appellant’s separate sales of harness sets are taxable; consequently, that is the only issue before OTA. Nothing in this Opinion is intended to express any conclusion on either the taxability of appellant’s centrifuge bowls or any undisputed measure.

additional briefing period ended, OTA closed the record, and this matter was submitted for an Opinion.

ISSUE

Whether appellant has established that further reductions to CDTFA's determined measure of tax are warranted.

FACTUAL FINDINGS

1. Appellant, a Massachusetts corporation, manufactures blood and plasma collection devices (collection devices) and sells components that are exclusively used therewith. Appellant has both a manufacturing facility and sales representatives located in California. Appellant's customers include plasmapheresis centers and blood banks.³
2. Among the components that appellant sells are harness/collection sets (harness sets). The harness set is a series of tubes that connects a blood or plasma donor to appellant's collection device. Appellant does not dispute that the harness set is discarded, along with other contaminated disposable products used in the collection process, prior to storage of the collected blood or plasma.
3. In its sales and use tax returns (SUTRs) for the audit period, appellant claimed deductions for its separate sales of harness sets. Upon audit, CDTFA disallowed appellant's claimed deductions, determining that these sales do not qualify for the exemption under R&TC section 6364.5 or California Code of Regulations, title 18, section (Regulation) 1589. Using a stratified statistical sampling method, CDTFA calculated disallowed separate harness set sales totaling \$2,504,078 for the audit period. Appellant does not dispute CDTFA's audit methodology or its calculation of appellant's separate sales of harness sets.
4. Based on its audit findings, CDTFA issued the NOD to appellant on January 22, 2021. Appellant filed a timely petition for redetermination.

³ Plasmapheresis is the process of separating plasma from blood cells, and often includes returning the blood cells (either with a plasma substitute or with treated plasma) to the donor.

5. On May 16, 2022, CDTFA issued a decision denying appellant's petition for redetermination with respect to appellant's claimed deduction for its separate sales of harness sets.⁴
6. This timely appeal followed.

DISCUSSION

There is no dispute regarding the amount of separate harness set sales appellant made during the audit period. The only issue in dispute is whether those sales were taxable.

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) Exemptions from tax are strictly construed against the taxpayer. (*Appeal of Owens-Brockway Glass Container, Inc.*, 2019-OTA-158P.) The party claiming an exemption bears the burden of showing that it clearly comes within the terms authorizing exemption. (*Ibid.*) Any doubt must be resolved against the right to an exemption. (*Standard Oil Co. v. State Bd. of Equalization* (1974) 39 Cal.App.3d 765, 769.)

R&TC section 6364.5(a) exempts from tax the sale (and storage, use, or other consumption) in this state of "any container" used to collect or store human whole blood, plasma, blood products, or blood derivatives that are exempt from tax pursuant to R&TC section 33, including, but not limited to, blood collection units and blood pack units (collectively, blood collection/pack units). R&TC section 33 provides that human whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, shall be exempt from taxation for any purpose. R&TC section 6364.5(b) additionally provides the following parameters for blood collection/pack units:

"Blood collection units" and "blood pack units" include all items that form an integral, interconnected package that, when sold to plasmapheresis centers and blood banks, are used to collect blood or blood components, which are then sold together with the bags and *tubing* in which they are contained. Blood pack units consist of a plastic bag or bags, *tubing*, and needle. Blood collection units are either a manual system that includes a needle, multiple bags, a bag containing saline solution, *tubing*, filters, grommets, and a pooling bag or an automated system that consists of a needle, a bag of anticoagulant, *tubing*, a plastic bowl containing a stainless-steel centrifuge and a pooling bag. Blood collection units

⁴ CDTFA's decision did, however, order a reaudit to remove the centrifuge bowl sales from the measure of disallowed claimed nontaxable sales.

and blood pack units also include plastic bags and *tubing* sold to plasmapheresis centers when those centers use them to collect blood plasma or platelets and then sell the plasma or platelets together with the bags and *tubing* in which they are contained.

(Italics added.)

CDTFA determined that appellant's separate sales of harness sets are not covered by the aforementioned exemption. Appellant disagrees with CDTFA's interpretation and believes R&TC section 6364.5's use of the term "any container" exempts all items used to collect or store blood or blood components, whether sold separately or as part of a kit, and especially so because the statute expressly incorporates multiple instances of the word "tubing."

The fundamental rule of statutory interpretation is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials v. Bd. of Equalization* (1959) 51 Cal.2d 640, 645; see also *Appeal of ISIF Madfish Inc.*, 2019-OTA-292P; *Goldstein v. Ralph's Grocery Co.* (2004) 122 Cal.App.4th 229, 233.) Generally, the most reliable indicator of legislative intent are the words of the statute, and thus, the first step of determining the Legislature's intent is to turn to the statutory language and apply a plain and commonsense meaning to those words. (*Appeal of ISIF Madfish Inc.*, *supra*; *Goldstein v. Ralph's Grocery Co.*, *supra*, 122 Cal.App.4th at p. 233; *People v. McHenry* (2000) 77 Cal.App.4th 730, 732-733.) If no ambiguity exists in the language, then "there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature" (*Appeal of ISIF Madfish Inc.*, *supra*; *Goldstein v. Ralph's Grocery Co.*, *supra*, 122 Cal.App.4th at p. 233; *People v. McHenry*, *supra*, 77 Cal.App.4th at p. 733.) "The meaning of a statute cannot be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible." (*People v. McHenry*, *supra*, 77 Cal.App.4th at p. 733.) "An interpretation that renders related provisions nugatory must be avoided . . . each sentence must be read not in isolation but in light of the statutory scheme" (*Ibid.* [citations omitted]; see also *Select Base Materials v. Bd. of Equalization*, *supra*, 51 Cal.2d at p. 645.)

Any Container

Appellant argues that R&TC section 6364.5's use of the term "any container" has no restrictions and therefore its harness sets, which are used to collect or store blood, qualify for the

exemption. Specifically, appellant claims that the statute is so expansive that “you can throw in the kitchen sink.”

Although R&TC section 6364 covers the general exemption for containers, R&TC section 6364.5 does not specifically adopt or reference the definition of containers found in R&TC section 6364.⁵ In the absence of a technical definition, OTA must apply “the plain meaning of a word as understood by the ordinary person, which would typically be a dictionary definition.” (*Hammond v. Agran* (1999) 76 Cal.App.4th 1181, 1189.) Merriam-Webster defines “container” as “one that contains[,] such as a receptacle . . . for holding goods” As such, any item seeking to qualify as a container under R&TC section 6364.5 would need to contain or hold human whole blood, plasma, blood products, or blood derivatives exempt under R&TC code section 33, during either the collection or storage of such blood or plasma.

Appellant established that the harness sets are used to connect a blood or plasma donor to appellant’s collection device. The harness sets also attach to, among other things, a temporary RBC storage bag, bowl, and plasma collection container.⁶ Therefore, during blood or plasma collection, blood or plasma passes through the harness set before it reaches the bag, bowl, and/or container. As such, the harness sets are more akin to a conduit in which blood and/or plasma is transferred or passed through during the collection process, rather than a container in which blood and/or plasma is contained, stored, or held.

Appellant’s argument that the term “any container” permits “throw[ing] in the kitchen sink” conflicts not only with the plain language of the statute, but also with the principle that

⁵ R&TC section 6364 exempts from the sales and use taxes “the gross receipts from the sale in this state of and the storage, use, or other consumption in this state of: (a) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container. (b) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this part. (c) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. (d) Containers, when sold or leased without the contents to persons who place food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged prior to sale. (e) For purposes of this section, ‘returnable containers’ means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are ‘nonreturnable containers.’” Appellant asserts that R&TC section 6364.5 was enacted specifically to exempt all components of the blood collection/pack units because CDTFA had previously determined certain components of the blood collection/pack units did not qualify for the exemption in R&TC section 6364. Therefore, there seems to be no dispute that R&TC section 6364 is inapplicable here.

⁶ The descriptions of these items were taken from appellant’s diagram of its collection device. Based on the context, OTA infers “RBC” stands for “red blood cells.”

exemptions from tax are strictly construed against the taxpayer. (See *People v. McHenry, supra*, 77 Cal.App.4th at p. 733; *Appeal of Owens-Brockway Glass Container, Inc., supra*; *Standard Oil Co. v. State Bd. of Equalization, supra*, 39 Cal.App.3d at p. 769.) The statute uses the specific term “container” rather than a broader and more expansive term such as “tangible personal property” or “item.” Tellingly, the statute provides that when sold to plasmapheresis centers and blood banks, blood collection/pack units include “all *items* that form an integral, interconnected package that . . . are used to collect blood or blood components” (R&TC, § 6364.5(b), italics added.) OTA must assume that the distinction between the term “container” in R&TC section 6364.5(a) and the term “items” in R&TC section 6364.5(b) was deliberate. Furthermore, the statute’s specific inclusion of blood collection/pack units as “containers,” in addition to the need to enact R&TC section 6364.5 itself, indicates that blood collection/pack units would not, absent the statute, be considered exempt containers.

In addition, subsection (b) of R&TC section 6364.5 itemizes the minimum contents necessary to constitute a blood pack unit, a manual system blood collection unit, and an automated system blood collection unit, when those units are sold to plasmapheresis centers and blood banks. The subsection also specifies that blood collection/pack units, when sold to plasmapheresis centers only, comprises plastic bags and tubes.⁷ The itemized lists include items that would not, absent the specifications in the statute, qualify as a container (e.g., needles, bags containing saline solution, filters, and grommets). If, as appellant suggests, subsection (a) of R&TC section 6364.5 intended to include “the kitchen sink,” then the entirety of subsection (b) would be unnecessary. Such an interpretation would render language in the statute nugatory, thereby violating the rules of statutory interpretation. (See *People v. McHenry, supra*, 77 Cal.App.4th at p. 733; *Select Base Materials v. Bd. of Equalization, supra*, 51 Cal.2d at p. 645.)

Appellant also argues that Regulation 1589(b)(1), which exempts certain containers, including blood collection/pack units, supports a finding that the harness sets are nontaxable. However, Regulation 1589(a) specifically defines a “container,” for purposes of the Regulation, as “the articles in or on which tangible personal property is placed for shipment and delivery” However, appellant’s harness sets are removed prior to storage and sale of the blood or plasma; and thus, blood and blood components/derivatives are not placed in harness sets

⁷ OTA notes that this portion of R&TC section 6364.5(b) does not reference blood banks. It also does not reference whole blood and other blood components, only blood plasma and platelets.

for shipment and delivery. Therefore, OTA rejects appellant's assertion that the harness sets qualify as a container under either R&TC section 6364.5(a) or Regulation 1589(a).

Blood Collection /Pack Units

As R&TC section 6364.5 explicitly expands the definition of a container to include blood collection/pack units, OTA must next determine whether the harness sets fall within either of the two definitions imparted by the statute, as provided above. Both definitions of blood collection/pack units require that the collected blood, blood components, plasma, or platelets be sold "together with the bags and tubing in which they are contained." However, appellant conceded at the oral hearing that the harness sets are discarded prior to storage of the bag of collected blood, blood components, plasma, or platelets. If the harness sets (i.e., tubing) are not sold with the bags, then per the explicit language of R&TC section 6364.5(b), they do not qualify as exempt blood collection units or blood pack units.⁸

While the foregoing is dispositive, OTA will address whether separately sold harness sets are otherwise covered by R&TC section 6364.5(b). The first definition of blood collection/pack units in R&TC section 6364.5(b) requires all items that form an integral, interconnected package be sold together. This necessarily means that a separate sale of a component of the package is not covered by the exemption, unless the item itself qualifies as an exempt container under R&TC sections 6364 or 6364.5(a) (e.g., blood bags). In its second definition, the statute includes "plastic bags *and* tubing sold to plasmapheresis centers when those centers use them to collect blood plasma or platelets . . ." as blood collection/pack units. (R&TC, § 6364.5(b), italics added.) As connoted by the use of the word "and" (as opposed to "or"), both plastic bags and tubing must be sold together to qualify as an exempt sale. Therefore, the express language selected by the Legislature again unambiguously indicates that multiple items were required to

⁸ On page 12 of CDTFA's Publication 45, Hospitals and Other Medical Facilities (Pub 45), CDTFA states, "Sales of these blood collection[/]pack units are not taxable even if the tubing, needles, filters, etc. are discarded and not sold together with the blood." CDTFA explains that this language acknowledges that some (but not all) of the tubing that is sold as a component of a blood collection unit or blood pack unit can be discarded by the blood bank or plasmapheresis center prior to sale of the blood bag. CDTFA's interpretation, however, does not account for the fact that, at the time R&TC section 6364.5 was enacted, blood collection/pack units were sold assembled with completely integrated and interconnected components. (See Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 993 (1997-1998 Reg. Sess.) Sept. 4, 1997.) Neither party has provided any evidence showing that tubing was removable, and not sold with the blood, at the time R&TC section 6364.5 was enacted. In any event, Pub 45 is not law, and when there is a conflict between the text in Pub 45 and the law, the law prevails. (See Pub 45 at preface.)

be sold together to constitute a blood collection unit or blood pack unit. Consequently, there is no basis to expand the exemption to separate sales of harness sets.

Appellant disagrees with a “narrow” reading of the statute and relies on the legislative history of R&TC section 6364.5 in support of its assertion that its separate sales of harness sets are or should be exempt from tax.⁹ Appellant emphasizes that R&TC section 6364.5 was enacted to address changes in technology that resulted in the components of a blood collection/pack unit becoming integrated and interconnected, but technology has changed yet again, and as a result, the components of the blood collection/pack units are now sold individually. Nevertheless, appellant argues that the components still qualify for the exemption because, once assembled by the purchaser, the components both comprise an “integral, interconnected package” and are analogous in function to blood collection/pack units. In short, appellant urges OTA to adopt an interpretation of R&TC section 6364.5 that harmonizes the current method of blood and plasma collection with the “spirit” of the exemption.

R&TC section 6364.5(b) specifically lists tubing as *one* of the necessary components of a blood collection unit or blood pack unit. A single component cannot constitute a blood collection unit, blood pack unit, or an “integral, interconnected package” when the definition of each requires the inclusion of more than one item. At the very least, the statute requires tubing be sold with a bag in order to qualify as a blood collection unit or blood pack unit.

Despite appellant’s assertion, there is nothing in the legislative history to support expanding the exemption to components that are separately sold (unless it is exempt in its own right, such as a container). Senate Committee notes reveal R&TC section 6364.5 was specifically enacted in response to CDTFA’s determination in 1996 that blood processing kits sold for a lump sum price were entirely taxable, even though the blood processing kits included nontaxable blood bags.¹⁰ (See, e.g., Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 993 (1997-1998 Reg. Sess.) Sept. 4, 1997.) The sponsor of the bill indicated that, at the time of enactment, “the current practice in many hospitals [was] to purchase

⁹ For example, appellant argues that CDTFA’s reliance on Business Taxes Law Guide Annotation 195.0085 (8/11/11) (Annotation 195.0085), which states that the legislative intent of R&TC section 6364.5 was to provide a narrow exemption, is incorrect. Annotations are not binding authority and do not have the force or effect of law. (Cal. Code Regs., tit. 18, § 5700(a)(1); *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) OTA does not rely on Annotation 195.0085 to determine the legislative intent, and thus, the annotation is not addressed further.

¹⁰ Prior to 1996, CDTFA’s policy was to reduce the lump sum selling price of the blood processing kits to exclude the exempt blood bag.

blood collection[/pack] units which come assembled with completely integrated and interconnected components.” (*Ibid.*) Absent from the notes, however, is any mention of separate sales of otherwise taxable tangible personal property. Indeed, as appellant has pointed out, separate sales of blood collection/pack unit components are a more recent development in the blood collection and processing industry. Therefore, the Legislature could not have contemplated separately sold components at the time it enacted R&TC section 6364.5.

OTA lacks authority to expand an exemption as a result of technological advancements. Statutes granting exemption from taxation must be strictly construed against the taxpayer. (*H. J. Heinz Co. v. State Bd. of Equalization, supra*, 209 Cal.App.2d at p. 4; *Standard Oil Co. v. State Bd. of Equalization, supra*, 39 Cal.App.3d at p. 769.) Moreover, appellant acknowledges that R&TC section 6364.5 was passed specifically to address technological changes in the blood collection and processing industry. As such, appellant is aware that if an expansion to the exemption is necessary to address technological changes, it is up to the Legislature to effectuate such a revision. (See *People v. Montano* (2022) 80 Cal.App.5th 82, 114 [“even when a legislature likely would have enacted a differently worded law had it foreseen future developments, any statutory revision reflecting that reality must come from that legislature . . .”].) Until then, OTA must uphold the statute as it currently stands. (See *Appeal of Talavera*, 2020-OTA-022P [an administrative agency is precluded from refusing to enforce the clear and unambiguous provisions of a statute].)

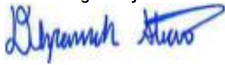
Based on the foregoing, appellant has not met its burden of showing that the harness sets qualify as an exempt blood collection unit or blood pack unit. Thus, CDTFA properly included appellant’s separately sold harness sets in the measure of tax.

HOLDING


Appellant has not established that further reductions to CDTFA’s determined measure of tax are warranted.


DISPOSITION

CDTFA’s action in denying appellant’s petition with respect to the disallowed claimed nontaxable sales of harness sets is sustained.

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Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:

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Josh Aldrich
Administrative Law Judge

DocuSigned by:

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Andrew Wong
Administrative Law Judge

Date Issued: 7/30/2024