

GIL-2008-26

October 15, 2008

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Attention: XXXXXXXXX

Re: Sales Tax Exemption

Dear XXXXXXXXX,

This letter is in response to your undated letter to the Colorado Department of Revenue. I apologize that it has taken so long to reply to your request. The department recently acquired the staff needed to respond to these types of requests.

The department also recently enacted a regulation governing requests for tax advice. We issue both private letter rulings and general information letters. See, §24-35-103.5, C.R.S. and Department regulation 24-35-103.5. Private letter rulings are issued in response to tax questions addressed to specific factual settings and are binding on the department. General information letters are issued in response to general tax questions and are not binding on the department. You can view this regulation on-line at:

<http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html>

I am initially treating your request as a request for a general information letter. As noted above, general information letters are general discussions of tax law and are not a determination with respect to any particular factual setting. For this reason, this letter is not a determination that the company's products fall within any exemption. If you would like a private letter ruling, please take a moment to review the regulation and resubmit your request with the necessary information.

1375 SHERMAN STREET
DENVER, COLORADO 80203

Issue

1. Are orthopedic implants consisting of screws and plates manufactured to various sizes exempt from sales tax?

Background

Your company sells orthopedic implants to hospitals and surgery centers. The implants consist of screws and plates used to correct bone breaks and fractures. The implants are manufactured in various sizes, but they are not adjusted to fit a particular individual. You believe that these items are prosthetic devices, but you are unclear whether they qualify as such in Colorado. Specifically, you ask whether they meet qualify in light of Department publication FYI Sales 68 (Medical and Dental Supplies and Equipment), which states, in part, that prosthetic devices are, “designed, manufactured or adjusted to fit a particular individual. ‘Adjusted to fit a particular individual’ means that the prosthetic device must be altered solely for the use of a particular person.” You state that you are currently charging sales tax, but some companies are refusing to pay tax because they believe that the items are exempt.

Discussion

1. *Materials furnished by a doctor as part of the professional services to the patient are exempt.*

There are at least three exemptions specifically related to the sale of medical equipment: therapeutic devices, prosthetic devices, and medical supplies furnished as part of a doctor’s professional service to a patient. See generally, §39-26-717, C.R.S. Given the great variety of medically related products, it sometimes difficult to determine where a particular product falls on the gradations from the archetype exemption established by statute.

Regardless of whether the products your company sell fall within the prosthetic or therapeutic device exemption, you may wish to consider the applicability of the exemption for the sale of materials furnished by a doctor as part of professional services to a patient. §39-26-717(1)(a), C.R.S. In order to qualify for this exemption, the material must leave the doctor’s office with the patient. For example, a splint furnished by a doctor to treat a fractured bone is exempt because it is furnished as part of the doctor’s professional services to the patient and the splint leaves with the patient. See, FYI Sales 68. There is no requirement under this exemption that the material be specifically designed, manufactured, or adjusted to the particular patient.

Moreover, it is sufficient that the material be furnished as part of the doctor’s professional services even though the material may have been purchased and owned by the hospital or clinic. Doctors typically do not work as sole proprietors and, therefore, do not personally furnish the material the patient. Rather, doctors are often employees/partners/members of a professional corporation, corporation, partnership, or limited liability company. It is these business entities, not the doctor, that purchase the materials which are ultimately used by the doctor as part of his or her professional service to the patient. Although there may be some situations where the provisioning of material by a hospital or clinic to the patient may be too attenuated from the professional services of a doctor so as to deny this particular

exemption, the department has agreed that the sale of materials, such as splints for treatment of fractured bones, to hospitals and health clinics and furnished as part of the doctor's professional service to the patient falls within this exemption.

In addition to these specific exemptions for medical goods, you may also wish to consider the exemption for sales to charitable organizations. Colorado exempts sales of goods to entities that qualify as a charitable organizations (typically those entities that hold a 501(c)(3) charitable entity certificate from the Internal Revenue Service). §39-26-718, C.R.S., Department FYI Sales 2 (Sales to Charitable Organizations). Similarly, sales to governmental entities performing governmental functions are also exempt. §39-26-704, C.R.S. For example, a county owned hospital or health clinic may qualify for this exemption. Compare, e.g., Nebraska Attorney General Opinion, 223, 03/28/1978 (county-owned hospital is operating in a governmental capacity).

Please note that the Department of Revenue administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and counties. Visit our web site at www.revenue.state.co.us for more information about state and local sales taxes.

Pursuant to state law, the Department will make public a redacted version of this letter. Your letter requesting this informational letter is not made public. See, §24-35-103.5(13), C.R.S. The regulation governing private letter rulings and informational letters is available on our web site at: <http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html>. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments or concerns about the redacted letter.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue