

# STATE OF COLORADO



DEPARTMENT OF REVENUE  
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GIL-13-005

February 6, 2013

XXXXXXXXXXXXXXXXXXXXX  
ATTN: XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

Re: Tear Serum Testing Modules

Dear XXXXXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXX ("Company") a request for guidance on the application of sales and use tax on TearLab™ serum testing modules ("Product").

The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

## Issue

Is Product exempt from Colorado sales or use tax as blood and urine testing kits and materials because the testing modules are similar in nature to that of a blood and urine testing kit?

## **Background**

Company is a physician's office that performs eye examinations along with procedures to help correct eye impediments. Company requests clarification on whether sales or use tax is due on Product if sold to a physician's office. Product uses a test card in an instrument that tests a patient's serum / tear osmolarity. One card is used for each eye and the card cannot be used again. Company represents that Product is similar to blood and urine test kits because blood and urine test kits use similar items (presumably the card).

## **Discussion**

We understand the serum/tear osmolarity test measures certain properties of tears, a component of which is serum. We further understand that serum is a fluid produced by the body and is found in both tears and in blood. We accept for purposes of our analysis here Company's representation that tests for blood and tears have some common characteristics in the manner they are performed.

Colorado provides a number of exemptions for medical supplies. One such exemption is for the sale of blood and urine tests.<sup>1</sup> In general, statutory exemptions to sales tax are narrowly construed, which means that a product that does not clearly fall with the terms of the exemption statute is not exempt.<sup>2</sup> The party asserting the exemption has the burden of establishing that it clearly is entitled to the exemption.<sup>3</sup> Finally, we interpret statutory exemptions to give them their plain and commonly understood meaning.

With these rules of interpretation in mind, we do not believe that the term "blood test" as used in the statute includes a test relating to tears produced by the eye. Blood and urine have specific and commonly understood meanings. We do not believe that these meanings include fluids (tears) produced by the eye. Moreover, a narrow interpretation of these exemptions forecloses any expansion of their terms to include tests relating to tears. Although there may be policy arguments for including serum/tear osmolarity testing in the exemption statute, the legislature has not so provided.

## **Miscellaneous**

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-

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<sup>1</sup> See, §39-26-717(d), C.R.S. This statute as well as Department publications can be viewed at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) > Tax Library.

<sup>2</sup> *Regional Transp. Dist. v. Charnes*, 660 P.2d 24, 25 (Colo. App. 1982); *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225, 226 (1972).

<sup>3</sup> *General Motors v. City and County of Denver*, 990 P.2d 59 (Colo. 1999).

rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax) for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

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