

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-3091
FAX (303) 866-2400



John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-12-009

November 6, 2012

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Durable Medical Equipment

Dear XXXXXXXXXXXX,

You submitted on behalf of your client ("Company") a request for guidance to determine the applicability of Colorado sales and use tax on XXXXXXXXXXXX.

The Colorado Department of Revenue ("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 > 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 the sale of XXXXXXXXX ("Product") exempt as a durable medical equipment in Colorado?

Background

Company rents and sells durable medical equipment to private individuals and is considering the addition of Product to its inventory. Product is a band that allows the controlled application of cooling to selected areas of the body. Product is wrapped around the affected area and is connected to a device that allows the area to be cooled to a set

temperature. The device that cools the cuff is not attached to the body, is relatively large, and not easily mobilized. This type of therapy is commonly used in the recovery of orthopedic surgery and is prescribed by the operating physician. Company believes Product meets the definition of durable medical equipment and is, therefore, exempt from sales tax if sold pursuant to a prescription.

Discussion

The Department does not have a regulation or publication that specifically addresses your inquiry. The following is a general discussion of the tax issues surrounding your request.

Colorado imposes sales and use tax on the sale of tangible personal property. §39-26-104 and 202, C.R.S. Colorado has several exemptions for medical equipment and supplies. The exemption most applicable to Product is the exemption for durable medical equipment. §39-26-717(2)(a), C.R.S. Durable medical equipment which qualifies for this exemption must meet four criteria.

- (l) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription, that:
 - a. can withstand repeated use;
 - b. is primarily and customarily used to serve a medical purpose;
 - c. is generally not useful to a person in the absence of illness or injury,
 - d. is not worn in or on the body.

Of the four criteria listed above, the only criterion that is in some doubt is whether the equipment "is not worn in or on the body." The Department is considering promulgating a regulation that includes examples of medical devices that qualify and do not qualify as durable medical equipment, including devices that are, in some fashion, worn on the body. If you would like a more specific ruling on the facts set forth in the request, you can request a private letter ruling.

Finally, it is important to note that, in addition to the four listed criteria, Product must be sold pursuant to a prescription in order to qualify for the exemption. This means that sales of Product to hospitals, medical clinic, and medical providers are not exempt unless the sale qualifies as a wholesale for resale. Sales of Product by these entities to patients are exempt if sold pursuant to a prescription.

Miscellaneous

This letter represents the good faith opinion of Department staff who are knowledgeable of 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-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 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,

Neil L. Tillquist
Colorado Department of Revenue
Tele: (303)866-5627
Email: ntillquist@spike.dor.state.co.us