

STATE OF COLORADO



DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-14-007

April 28, 2014

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Intrauterine Devices

Dear XXXXXXXXXXXX,

You submitted on behalf of your client ("Company") a request for guidance to determine whether intrauterine devices are subject to Colorado sales or use tax.

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 Rule 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 Department Rule 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

Are intrauterine devices subject to Colorado sales or use tax?

Background

Intrauterine devices (IUDs) are small medical devices that are inserted into the uterus and act as a contraceptive. Company asserts that IUDs are usually dispensed pursuant to a prescription, but can, at times, be dispensed without a prescription.

Discussion

Colorado exempts a number of medical supplies from state and state-administered sales and use taxes.¹ Specifically, Colorado exempts “all sales of prescription drugs dispensed in accordance with a prescription by a licensed provider or furnished by a licensed provider as part of professional services provided to a patient or client.”²

An IUD that releases hormones is considered a drug. As a result, it appears that any IUD dispensed pursuant to a prescription that releases hormones will be exempt from Colorado sales and use taxes as a prescription drug dispensed pursuant to a prescription by a licensed provider.

Copper IUDs do not appear to be a prescription drug, so we look to another exemption for which it may qualify. An IUD, whether furnished to a patient pursuant to a prescription or not, will likely qualify for the exemption for materials furnished by a licensed provider as part of their professional services because only a licensed provider can insert an IUD and the patient leaves the licensed provider's office with the IUD.³

Company also raises the question of whether an IUD could be eligible for the durable medical equipment exemption. In order to be eligible for the durable medical equipment exemption, such equipment must be dispensed pursuant to a prescription, can withstand repeated use, is primarily and customarily used to serve a medical purposes, is generally not useful to a person in the absence of illness or injury, and is not worn in or on the body.⁴ Because an IUD cannot stand repeated use, does not serve a medical purpose, is useful to a person in the absence of illness or injury, and is worn in the body, an IUD is not eligible for the durable medical equipment exemption.

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-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

¹ §39-26-717, C.R.S.

² §39-26-717(1)(a), C.R.S.

³ §39-26-717(1)(k), C.R.S.

⁴ §§ 39-26-717(1)(j) and 717(2)(a), C.R.S.

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
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