



COLORADO
Department of Revenue

Taxation Division
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GIL-15-017

June 8, 2015

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Replacement Batteries in Electric Wheelchairs

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for guidance to determine whether replacement batteries in electric wheelchairs qualify as repair or replacement parts for a medical device.

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 but 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 treats this request as one for a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If a retailer would like the Department to issue a private letter ruling on the issue raised here, the retailer can resubmit a request and fee in compliance with Department Regulation 24-35-103.5.

Issue

1. Do replacement batteries in electric wheelchairs qualify as repair or replacement parts for mobility enhancing equipment?
2. If so, what are the documentation requirements for the retailer?

Background

Company is a retailer who sells a wide variety of batteries. One of the batteries sold is a general purpose battery (medical and non-medical use) that can be used as a replacement battery for electric wheelchairs. However, these batteries are frequently used in devices other than wheelchairs.

Discussion

Colorado exempts a number of medical supplies from state and state-administered sales and use taxes.¹ Specifically, Colorado exempts, among other medical devices and equipment, all sales of mobility enhancing equipment.² Mobility enhancing equipment means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription.³ The statute defines mobility enhancing equipment to include wheelchairs and wheelchair components or accessories, motorized carts, and scooters.⁴ Batteries are component parts to these types of equipment if they are powered by electricity. Therefore, the sale of batteries is exempt from sales tax and use tax as a replacement part or component to the wheelchair, motorized cart, and scooter.

In order to qualify for the exemption, the mobility enhancing equipment must be purchased pursuant to a prescription. A prescription is a written order by a licensed physician, physician's assistant, advanced nurse practitioner, with prescriptive authority, and on which is the name and address of the person receiving the prescription. For auditing purposes, the prescription must describe the mobility enhancing equipment. For example, a prescription for a "wheelchair" is a sufficient description and need not state that it is an electric or motorized wheelchair. The prescription also need not be for the repair or replacement part so long as the part is for equipment for which the prescription is issued.

When making exempt sales, a retailer must properly document such sales to substantiate the exemption. In cases such as this, the Department would likely conclude that the retailer has made a good faith determination if the retailer maintained a copy of the prescription, had evidence that the person making the purchase is the person to whom the prescription is made or is making the purchase on behalf of such person (e.g., purchaser's surname on driver's license is same as person who received the prescription), and that the battery was suitable as a replacement part of the equipment described in the prescription. If a customer cannot provide a copy of the prescription and document that purchaser is the patient or acting on behalf of the patient, then the retailer should advise the customer that tax must be collected but that the customer can request a refund from the Department.

The Department also generally views an affidavit signed by the customer stating that the batteries are going to be used in a wheelchair as the retailer making a good faith determination. However, the retailer must still exercise good judgment in accepting affidavits. For example, if a retailer accepted an affidavit from someone purchasing numerous batteries for one prescription, the Department would likely not view such acceptance of the affidavit as being a good faith determination. Lastly, if the retailer sells numerous batteries for wheelchairs, it could develop some type of standard form that the customers sign to acknowledge that the batteries are being used for an exempt purpose.

¹ §39-26-717, C.R.S.

² §39-26-717(1)(j), C.R.S.

³ §39-26-717(2)(b), C.R.S.

⁴ §39-26-717(2)(b)(II), C.R.S.

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/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