

STATE OF COLORADO

DEPARTMENT OF REVENUE

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John W. Hickenlooper
Governor

Barbara J. Brohl
Executive Director

GIL-14-014

May 29, 2014

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Hemodialysis Devices

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX ("Company") a request for guidance to determine whether hemodialysis equipment is 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.

Issues

Does hemodialysis equipment qualify for the exemptions for durable medical equipment or prosthetic devices?

Background

Hemodialysis is a medical treatment that replaces the function of the kidneys in patients suffering from End Stage Renal Disease (ESRD). Company asserts that every dialysis treatment has a nephrologist's written standing order (prescription).

Discussion

Colorado exempts a number of medical devices and supplies from state and state-administered sales and use taxes.¹ Specifically, Colorado exempts all sales of durable medical equipment and prosthetic devices.² Durable medical equipment is statutorily defined as:

Equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription, that:

- 1) Can withstand repeated use;
- 2) Is primarily and customarily used to serve a medical purpose;
- 3) Is generally not useful to a person in the absence of illness or injury; and
- 4) Is not worn on the body.³

Hemodialysis equipment is equipment that is used to remove waste products that build up in the blood when the kidneys are not able to do so on their own. A prescription for dialysis treatment employing the use of hemodialysis equipment must be issued by a licensed provider before the equipment may be used or obtained by the patient. Hemodialysis equipment is able to withstand repeated use in order to service a patient's needs and is not worn in or on the body. In addition, hemodialysis equipment does not generally serve a purpose to individuals who are not seeking treatment for ESRD or other related illnesses. Therefore, it appears hemodialysis equipment may qualify for the durable medical equipment exemption.

It should be noted that a standing order by a licensed provider for hemodialysis qualifies as a prescription if it is entered into a written order or stored as electronic data.⁴

We note that this view is consistent with the Streamlined Sales and Use Tax Agreement (Streamlined), which characterizes hemodialysis equipment as durable medical equipment. It is the position of Streamlined that kidney dialysis equipment not worn on the body, including repair and replacement parts, is considered durable medical equipment unless specifically excluded from the definition.

¹ §39-26-717, C.R.S.

² §39-26-717(f) and §39-26-717(j), C.R.S.

³ §39-26-717(j), C.R.S.

⁴ §39-26-717(k)(2)(a)(III), C.R.S.

We understand that the technology in this area is evolving and may result in portable, ambulatory hemodialysis equipment. The views expressed in this letter do not extend to such equipment.

The issue of whether hemodialysis equipment qualifies as a prosthetic is more difficult. Hemodialysis equipment is performing a function that would normally be performed by the kidneys. However, a prosthetic device is typically understood to refer to equipment that is worn on the body, such as an artificial arm or leg. We are hesitant to interpret this exemption beyond its usual and customary meaning. We decline in the context of a general information letter to suggest such a broad interpretation.

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 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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