

# STATE OF COLORADO

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



GIL-2007-13

Bill Ritter, Jr.  
Governor

Roxy Huber  
Executive Director

XXXXXXXXXXXXXXXXXX.  
Attn: XXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

February 14, 2008

Re: Taxability of [name] products

Dear XXXXXXXXXXX,

This letter is in response to your letter to the Colorado Department of Revenue, dated November 13, 2007, re: taxability of [Company] products.

## Issue

Are the products listed below exempt from sales tax if sold for the purpose of pain management with a physician's prescription?

## Background

The following background is provided in your request. [Company] produces various types of mattresses and other bedding products containing pressure-relieving material composed of high-density, visco-elastic, memory cells. The cells are temperature sensitive causing the mattresses and products to conform to the contours of the body allowing for the person's weight to be evenly disbursed. The design makes the mattresses and products are useful in helping people with various infirmities obtain a restful sleep and are commonly recommended for people with back-pain, neck pain and pressure sores. The following is a list of products and a brief description.

*[name] Mattress* – composed of visco-elastic material developed to support the body in perfect musculoskeletal alignment.

*Therapeutic Mattress* – composed of visco-elastic material and designed for institutional and home care environments.

*Rehab Mattress* - composed of visco-elastic material designed to maximize independence of the immobile or injured patient.

*Bassinet Mattress* - composed of visco-elastic material and designed for newborn and pediatric care.

*Bariatric Mattress* - composed of visco-elastic material and designed for the specific needs of bariatric patients for the prevention and treatment of pressure ulcer incidence.

*Neonatal Mattress* - composed of visco-elastic material and designed to provide comfort and skin care protection for the neonate.

*[name] neck pillow* - composed of visco-elastic material in an ergonomically correct shape to provide maximum support to the neck.

*Support pillow* – designed to give pressure relieving support to the lumbar area, under the legs or behind the neck.

*Transit Pillow* – designed to wrap around the cradle the neck to relieve pressure.

*Millennium Pillow* – patented design provides neck alignment whether you sleep on your side or back.

*Comfort Pillow* – traditional pillow shape with a pressure relieving shell filled with visco-elastic micro-cushions designed for pressure management.

*Classic Pillow* – traditional pillow design utilizing [Company] pressure-relieving material.

*Body Pillow* - similar to the Comfort Pillow mentioned above in a size that supports the positioning and comfort of an individual's entire body.

*Wheel Chair cushion* – designed with pressure relieving material to reduce pressure at the bony prominences that can result in pressure ulcers.

*[name]-Travel Set* – includes a Mattress Overlay and Travel Neck Pillow.

*Mattress Overlays* – the ability to add three inches of pressure-relieving material to any sleeping surface.

*Neck Support Pillow* – unique “horseshoe” shape containing pressure-relieving material designed to cradle the neck to relieve pressure while traveling.

*Universal Support Pillow* – half-moon shape containing pressure-relieving material designed to support the lumbar area.

*Lumbar Support Cushion* – properly supports the mid and lower back.

*Home and Office Seat Cushion* – distributes weight evenly over its entire surface to help people sit comfortably for extended periods of time.

*Leg Spacer* – helps to relieve lower back and hip pain.

## **Discussion**

A therapeutic device, appliance or related accessory, with a retail value of more than one-hundred dollars, and that is sold to correct or treat a physical disability or surgically created abnormality are exempt from Colorado sales and use tax if the product is prescribed by a doctor. §39-26-717(1)(b), C.R.S. However, exemptions such as this are narrowly construed. Transactions are not exempt unless they clearly fall within the exemption. *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225, 226 (1972).

The therapeutic devices contemplated in this exemption are those devices that are primarily and customarily used for medical purposes and are not useful to a person in the absence of injury or illness. Otherwise, the exemption would expand beyond traditional notions of therapeutic devices to items of everyday use. Weight lifting equipment, a hot tub / spa, or water bed can be therapeutic. Indeed, it is undoubtedly the case that a number of mattresses and pillows marketed to the general public provide in varying degrees improved musculoskeletal alignment and reduce points of pressure on the skin. A doctor may recommend the use of a water bed, weight-lifting equipment or a common pillow to reduce pain or prevent pressure sores. However, it would be a contrary to the legal mandate that we narrowly interpret exemptions to expand this exemption to include everyday household items simply because a doctor or chiropractor prescribes them. See, Department of Revenue FYI Sales 68 (“In addition, the item must be devised or constructed for the particular purpose of healing or curing a human disability or surgically-created abnormality.”).

This is not to say, however, that a mattress or pillow cannot be a therapeutic device. There are certainly beds and mattresses that are specifically designed only for medical use and typically do not have use except for a person who is injured. See, e.g., Florida Technical Assistance Advisement 02A-019, 03/20/2002. However, the information provided in your letter and sales brochure suggests most of the items are commonly used for everyday living and have usefulness to a person who is not ill or injured. Therefore, and based on the information provided, these items do not qualify as therapeutic devices.

The names of some products suggest that they might be specially designed and primarily used for medical purposes, such as the Rehab Mattress, Therapeutic Mattress, Bariatric Mattress, and wheelchair pillow. However, I cannot draw any conclusions from the scant information provided in the letter. The literature enclosed with the letter does not discuss these items. I should also note that it is not sufficient to demonstrate that the pillows or mattresses prevent pressure ulcers, which appears to be the principal medical claim of a number of the products. Therapeutic implies treatment and curative properties. Items that do not treat or cure, but are primarily designed to prevent injury are not included in this exemption. See, Department FYI Sales 68 (“A therapeutic “device” means a piece of equipment or a mechanism designed to serve the special purpose of correcting or treating a human physical disability or surgically-created abnormality.”). Given that mattresses and pillows are useful for many years, I assume that the primary purpose of these items is the prevention of such ulcers, even though they may be used for a short duration to treat existing ulcers.

Similarly, bariatric equipment, although larger and sturdier, does not, in and of itself, qualify for the exemption. Equipment specifically designed for obesity does not qualify unless it also therapeutic. Compare, Indiana Letter of Finding No. 05-0299, 02/01/2007 (Bariatric equipment, designed to be sturdier and larger, is not exempt because it did not alleviate or correct the patient’s medical condition of obesity.).

The exemption applies only to devices or appliances (and accessories). A device or appliance implies equipment. Items such as a heel protector, boot cradle, and support hose are not equipment. See, Department of Revenue FYI Sales 68. Based on the information provided, I cannot conclude that any of the pillows or mattresses described above clearly fall within the exemption as devices or appliances.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

Steve Asbell  
Taxpayer Service Division  
Phone 303.866.3889  
Email [sasbell@spike.dor.state.co.us](mailto:sasbell@spike.dor.state.co.us)