

STATE OF COLORADO

DEPARTMENT OF REVENUE

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GIL-2008-4

Bill Ritter, Jr.
Governor

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Executive Director

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February 21, 2008

Re: Taxability of motorized scooters, boot walker, and soft shoe

Dear XXXXXXXXX,

This letter is in response to your letters to the Colorado Department of Revenue, dated December 5, 2007, re: taxability of motorized scooters and a variety of orthopedic boots and shoes.

Colorado Department of Revenue provides informational letter as a service to taxpayers. These letters represent the opinion of knowledgeable and experienced department staff and can be a valuable resource in making informed decisions regarding your tax obligations. However, these letters are not binding on the department. §24-35-103.5, C.R.S.

Issues

1. Are the [scooter] and [scooter] exempt from tax?
2. Are the OTC professional orthopaedic premium short-leg walker boot, professional orthopaedic post-op shoe soft top, and the [name] Suspension Boot exempt from tax?

Background

You provide the following brief descriptions of two groups of products. The first group is comprised of two types of motorized scooters. These scooters are padded chairs mounted on a platform that has either three or four wheels. The scooters are powered by an electric motor and steered by a handle bar mounted to a post. The scooters are designed to carry one person both indoors and outdoors. The scooters presumably marketed to people who have difficulty walking longer distances.

The second group is comprised of either a short leg boot walker or soft shell shoes. The boot walker is described as a short leg cast a wraparound sole that absorbs heel strikes, and used to facilitate walking for a person who has suffered a strain, sprain or fracture. The [name] shoe is a slipper that is padded in part and reinforced in part to provide comfort for a person who has suffered soft tissue or trauma to the foot. Both the boot walker and soft shoe are marketed as "OTC," which I assume means that they do not require a prescription – i.e., "over the counter." The [name] suspension boot is

a padded boot that relieves heel pressure by an elevated soft foam heel pad within the boot. It is used to prevent or treat pressure sores.

Discussion

1. Motorized scooters are not exempt.

Colorado imposes a sales and use tax on the sale, use, storage or consumption of tangible personal property (§39-26-104(1)(a), C.R.S.). However, wheelchairs are exempt. §39-26-717(1)(a), C.R.S. The issue in this case is whether the scooters qualify as a wheelchair.

Exemptions from taxation are narrowly construed and will not be granted unless the transaction clearly falls within the exemption. *Security Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225, 226 (1972). Although the scooters have characteristics of a wheelchair, they do not appear to be what is commonly understood to be a wheelchair. Indeed, the manufacturers themselves do not refer to them as wheelchairs. Therefore, I do not believe these scooters are exempt.

2. Boot walker, soft shoe and [name suspension boot] are not therapeutic devices.

Colorado exempts the sale of therapeutic devices, appliances, or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality. §39-26-717, C.R.S. Exempt therapeutic devices that cost \$100 or more must be prescribed by a healing arts practitioner. However, and as noted above, this exemption, like all other exemptions, is narrowly construed. There are a variety of products that have therapeutic effects but do not qualify as an exempt therapeutic device. Band-aids, padding, support hose, and wrist or elbow bands, are examples of items that assist in the process of healing or treatment of a disability but are not commonly understood to be therapeutic devices.

A therapeutic “device” is defined as 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. An “appliance” is defined as a piece of equipment for adapting a tool or machine to a special purpose. See, Department FYI Sales 68, page 2. A boot cradle, such as the short-leg walker boot, or heel protector are examples of items that are therapeutic but do not qualify as therapeutic devices because they are not equipment. For this same reason, the soft shoe and [name suspension boot] do not qualify as therapeutic devices.

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,

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