



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-09-022

May 13, 2009

XXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX

Re: medical equipment / sales tax

Dear Mr. XXXXXXXXXXX,

You request guidance regarding the taxability of certain medical equipment sold by XXXXXXXXX (the "Company"). The department issues general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law, does not provide a specific determination, and is not binding on the department. A private letter ruling is a determination of the applicability of tax to a specific set of circumstances and is binding in the department. A party requesting a private letter ruling must provide certain information and remit a fee. For more information about general information letters and private letter rulings, please refer to the Department's regulation 24-35-103.5, C.R.S., which is available on our web site at: www.taxcolorado.org > FYI/Publications > Rulings.

We will initially treat your request as one for a general information letter. You may resubmit your request as a private letter ruling.

Issue

Is medical equipment sold by the Company subject to sales or use tax?

Background

The Company is in the business of manufacturing and selling custom disposable instruments for patients undergoing joint replacement surgery. These instruments are not commercial off-the-shelf products, but are made for each patient using their own anatomy and cannot be re-used on another patient. All of the products are sold directly to hospitals, surgery centers, and distributors.

Discussion.

Colorado imposes sales and use tax on the sale, use, storage, or consumption of tangible personal property. §§39-26-104 and 202, C.R.S. Colorado exempts therapeutic devices and

related accessories and medical supplies provided by a doctor in the course of professional services to a patient. §39-26-717, C.R.S. See, FYI Sales 68.

In order to qualify as an exempt material supplied by a doctor in the course of providing professional services to a patient, the material must leave the doctor's or medical facility with the patient. For example, a bone splint or fixator typically leaves with the patient and, therefore, is exempt. Materials that do not leave the doctor's office or medical facility are considered consumed by the doctor or hospital and the doctor or hospital must pay sales tax when the material is purchased from suppliers or use tax if the material is purchased without paying sales tax. For example, syringes are considered consumed by the doctor, not the patient, and, therefore, the doctor must either pay sales tax when he or she acquires the syringe or pay use tax if purchased without paying sales tax.

Therapeutic devices sold by a doctor are exempt if the device is used to correct or treat a human physical disability or abnormality and if it is less than one-hundred dollars. Therapeutic devices that are sold for one-hundred dollars or more are also exempt, but only if sold in accordance with a written recommendation from a license doctor.

Please note that purchases by charitable and governmental organizations are generally exempt from tax. Some hospitals may qualify as either charitable organizations or as governmental organizations (e.g., a county hospital). See, FYI Sales 1.

For more information about these exemptions, please visit our website at www.taxcolorado.org > FYI/Publications.

As noted earlier, you can submit your request as a private letter ruling if you would like a specific determination regarding the circumstances set forth above.

Miscellaneous

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling 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 version of the ruling.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue