



COLORADO
Department of Revenue
Taxation Division

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GIL-11-011

June 7, 2011

XXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Taxability of medical-related services providers

Dear XXXXXXXXXXXX,

You submitted on behalf of your client ("Company") a request for guidance on the application of sales tax for the provision of medical-related services. The 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 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.taxcolorado.org > FYI/Publication > 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 regulation 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.

Issue

Does Colorado sales tax apply to charges for services related to Company's medical device? If the services rendered are tax exempt, does Company still need to register for a sales tax account?

Background

Company is a for-profit corporation that provides medical devices and data processing services to patients who are diagnosed with the possibility of contracting an eye disease. To obtain Company's services, patients must undergo an examination by their doctor, who then prescribes for the patients the use of Company's medical equipment. The medical equipment, which is purchased from a foreign-based subsidiary, is an ophthalmic device which continually monitors and detects visual distortions that may lead to eye diseases.

Doctors must order the equipment directly from Company when a patient qualifies for use of the medical equipment. Company ships the medical equipment to the doctor's office through a third-party carrier such as UPS or FedEx. Machines can be used only by the patient who was prescribed the machine because each device is uniquely calibrated for that specific patient.

Patient obtains the equipment from their doctor and uses the device in their own homes. The device scans and collects data from the patient's eyes and the data is transferred through the Internet to Company's headquarters, which is located outside of Colorado. The data is converted to usable data and analyzed by computers. After the data is analyzed, both the doctor and patient are able to view the results of each scan through an online interface, allowing the doctor to monitor the progress of the patient's eyes between examinations. Based on a patient's profile, Company will have experts analyze the data if the data collected is abnormal. In addition, Company employs a call center, also located outside Colorado, that will notify the doctor and patient if results of eye conditions worsen.

Company charges a monthly service fee for its data processing, call center, and online hosting services. Company also charges an initial one-time fee that qualifies the patient for the services. Doctors do not receive a commission or referral fee, but receive a portion of the initial fee that will reimburse the doctor for the initial examination of their patients.

Patients using the equipment are not subject to a contract¹ and, at the end of usage, must return the medical equipment to Company. While the device is used by patients, the device remains the property of Company. The invoices do not refer to the agreement as a sale or rental of the medical equipment.

The Company's only presence in Colorado is when a salesman from outside Colorado enters the state to give demonstrations on Company's product to doctors and physicians at trade shows and medical conventions. No sales are made during these visits, as sales are only made when a doctor prescribes the medical device to a patient. In addition, Company has no property in Colorado, other than medical devices prescribed to patients within Colorado.

Discussion

Colorado levies sales and use tax on the sale, use, storage, or consumption of tangible personal property. §§39-26-104(1)(a) and 202, C.R.S. Colorado exempts a variety of medical-related products. One such exemption, which is effective for purchases on or after August 10, 2011, is the exemption for durable medical equipment. §39-26-717(1)(j), C.R.S.²

"Durable Medical Equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription by a licensed physician, physician's assistant or advanced practice nurse with prescriptive authority that:

- A. Can withstand repeated use;
- B. Is primarily and customarily used to serve a medical purpose;

¹ The department assumes that this means the Company does not require a patient to sign a document which would constitute a contract. However, the absence of such a document does not mean that there is not a contractual relationship between the patient and Company. For example, a patient has an obligation to pay Company a fee and to return the device – both which constitute contractual terms.

² Although there are other exemptions that apply to medical equipment and may apply here, it is not necessary to address these exemptions because the ophthalmic device falls within the definition of durable medical equipment exemption.

- C. Is generally not useful to a person in the absence of illness or injury, and
- D. Is not worn in or on the body.

§39-26-717(2)(a), C.R.S. The ophthalmic device described by Company appears to meet the definition of durable medical equipment and, therefore, the sale and use of this equipment is exempt from sales and use tax.

You ask whether the charges for services, such as monitoring, call center assistance, and reimbursement for physician services, are exempt. You state that there is no charge for the rental of the device.³ Colorado does not impose sales tax on the provisioning of medical-related services. Therefore, these charges are exempt from sales tax.

Finally, retailers who sell products and services that are exempt from sales and use tax are not required to open a sales tax account with the Department. You may want to consider contacting home rule cities and counties, whose taxes are not administered by the department, to determine whether they levy sales or use taxes on the products and services you describe or require registration. For a list of home rule cities and counties, you can go to www.taxcolorado.org > Forms > Sales Taxes > Form DRP 1002.

Miscellaneous

Pursuant to state law and department regulation 24-35-103.5, noted above, the Department will make public a redacted version of this letter. Your letter requesting this general information letter is not made public. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments, or objection concerning the redacted letter.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

³ The department will closely examine transactions in which a retailer asserts that it is not charging for the sale or rental of taxable goods when the retailer provides both non-taxable services and taxable goods bundled in one transaction. However, such an examination is not required here because, even if there were a charge for the rental of the device, such charge would be exempt as durable medical equipment.