



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-14-024

November 4, 2014

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Re: Walk-in Bathtubs, Wheelchair Lifts, Modular Ramps

Dear XXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXX ("Company") a request for guidance to determine the applicability of Colorado sales or use tax on walk-in bathtubs, in-home wheelchair mobility lifts, and modular ramps.

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

Do walk-in bathtubs, in-home wheelchair mobility lifts, and modular ramps qualify for the durable medical equipment exemption?

Background

Company sells walk-in bathtubs, in-home wheelchair mobility lifts, and modular ramps. Walk-in bathtubs may have lifts to aid a person's ability to get in and out of the bathtub or may be purchased without a lift. In-home wheelchair mobility lifts are used for transporting a person and a wheelchair up stairs. These lifts can be used inside or outside the house. A modular ramp is placed over stairs so people in wheelchairs can

get into and out of their homes. The modular ramp is not portable, but is not permanently affixed to the house.

All products are sold directly to customers and can be obtained through a prescription by a licensed medical professional. The products are either delivered from a location outside Colorado to an in-state warehouse and then delivered directly to the customer by Company's representatives, or may be delivered directly to the customer via common carrier from an out-of-state location. Company represents that title transfers to the customer at the point of delivery to the customer.

Discussion

Colorado exempts a number of medical equipment and supplies from state and state-administered sales and use taxes. Specifically, Colorado exempts all sales of durable medical equipment and mobility enhancing equipment. Mobility enhancing equipment is statutorily defined as:

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

- 1) Is primarily and customarily used to provide or increase the ability to move from one place to another;
- 2) Is appropriate for use in a home, in a person's community, or in a motor vehicle;
- 3) Is not generally used by a person with normal mobility; and
- 4) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Company represents that in-home wheelchair mobility lifts and modular ramps are all dispensed pursuant to a prescription by a licensed provider. In addition, in-home wheelchair mobility lifts and modular ramps are primarily and customarily used to provide or increase the ability to move from one place to another and can be used in a home or business because the in-home wheelchair mobility lift allows a person to get up a flight of stairs within or outside a home, and the modular ramp allows a person to get into and out of a home or business that requires climbing stairs to enter the home or business. In-home wheelchair mobility lifts and modular ramps are also not generally used by a person with normal mobility. Therefore, it appears that in-home wheelchair mobility lifts and modular ramps are mobility enhancing equipment. Moreover, the statute explicitly lists lift chairs and patient lifts as examples of mobility enhancing equipment. However, it does not appear that walk-in bathtubs are mobility enhancing equipment because the bathtub is not primarily and customarily used to provide or increase the ability to move from one place to another.

Colorado also exempts from tax the sale and use of durable medical equipment. We, thus, consider whether the walk-in bathtub qualifies as durable medical equipment. 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.

Company represents that a walk-in bathtub is dispensed pursuant to a prescription by a licensed provider. In addition, walk-in bathtubs are able to withstand repeated use because the walk-in bathtub becomes a permanent fixture of a house and is not worn in or on the body.

It is the Department's understanding that these bathtubs may be marketed for or used in the absence of illness or injury and, in these circumstances, would likely be subject to tax. For this reason, Department has some reservation about whether the walk-in bath qualifies for this exemption. However, we generally believe that walk-in bathtubs are used to serve a medical purpose. Therefore, if a walk-in bathtub is provided pursuant to a prescription by a licensed provider to someone with an illness or injury, such walk-in bathtub would appear to be eligible for the durable medical equipment exemption.

Although it is the Department's understanding that someone may obtain any of these items without a prescription, we note that in order for these items to be exempt, they must be dispensed pursuant to a prescription.

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,

Office of Tax Policy
Colorado Department of Revenue