



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-17-007

March 16, 2017

XXXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Re: Fluoride Varnish

Dear XXXXXXXXXXXXXXXX,

You submitted on behalf of your client (“Company”) a request for guidance on whether sales or use tax applies to Company’s Cavity Free at Three kits and fluoride varnishes.

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, but 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 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

1. Does sales tax apply to Company’s sales of XXXXXXXXXXXXXXXX kits?
2. Does sales tax apply to Company’s sales of fluoride varnish?

Background

The XX administers a program called XXXXXXXXXXXXXXXX. XXXXXXXXXXXXXXXX trains providers to conduct oral health screenings and apply a fluoride varnish. This program also trains medical and dental providers to teach children and pregnant mothers about the importance of oral health and hygiene and how to brush, floss, and implement a fluoride treatment.

Company is a nonprofit organization that holds a 501(c)(3) certificate from the Internal Revenue Service. Company sells XXXXXXXXXXXXXXXX kits to medical and dental

providers to be used according to the training provided under the program. The kits contain materials to perform an infant oral evaluation and fluoride varnish application. After the provider removes the gauze and fluoride varnish, the remaining items in the kit are given to the child or parent to take home. The kit contains the following items:

- Single dose of fluoride varnish
- Gauze pads
- Instructions and informational material
- Toothbrushes
- Education card for parents
- Taxpayer program card
- A zip lock bag to hold the items

Company represents that “fluoride varnish requires prescriptive authority and must be applied in a medical or dental office” and that fluoride varnish can be purchased from Company independent from kits.

Structure of Analysis

To determine whether Company’s transactions are exempt from sales and use tax, the Department will examine the following question:

1. Is the sale of kits and fluoride varnish exempt pursuant to §§ 39-26-717(1)(a) and (3), C.R.S.?

Discussion

Colorado levies sales or use tax on the sale or use of tangible personal property.¹ However, Colorado exempts from these taxes a variety of medical products. Among those items exempted are prescription drugs dispensed in accordance with a prescription by a licensed provider or materials furnished by a licensed provider as part of professional services provided to a patient.² Licensed providers are defined as any person authorized to prescribe drugs under the provisions of title 12, C.R.S.

The Food and Drug Administration does not classify fluoride varnish as a drug but, rather, as a class II medical device.³ Therefore, neither the kit nor fluoride varnish qualify under the exemption for drugs dispensed pursuant to a prescription.

However, Colorado also exempts materials furnished by a licensed provider as part of professional services provided to a patient.⁴ We assume that the medical and dental staff referenced in your letter are either licensed providers or acting under the supervision of a licensed provider in accordance with state law. Given this assumption, the fluoride varnish and the other items in the kit appear to be materials furnished by licensed providers in connection with providing professional services to patients and, therefore, would be exempt.

¹ § 39-26-104 and 202, C.R.S.

² §§ 39-26-717(1)(a) and (k), C.R.S.

³ See, United States Code of Federal Regulations, 21 CFR 872.3260.

⁴ § 39-26-717, C.R.S. Licensed providers are those that are authorized under title 12, C.R.S. to prescribe drugs. Among those that are “licensed providers” are dentists and dental hygienist. See, §12-35-128(1)(a)(II)(C),C.R.S. (hygienist are authorized to apply fluoride varnish under the direction of a dentist).

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/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