



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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PLR-16-008

April 12, 2016

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Material Furnished by a Licensed Provider

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXX ("Company") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 24-35-103.5. This ruling cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

Is Product exempt from Colorado sales tax?

Conclusion

Product is exempt from sales and use tax as a prosthetic device.

Background

XXXXXXXXXXXXXXXXXX ("Product") is designed to correct a physical deformity in the male urinary tract known as Benign Prostatic Hyperplasia ("BPH"), which involves hyperplasia (an increase in number) of certain cells in the prostate gland that surrounds the urethra. This increase in cells results in the formation of large nodules in the transition zone of the prostate. When sufficiently large, the nodules deform the urethra and increase resistance to flow of urine from the bladder.

Product corrects this deformation with permanent adjustable transprostatic implants placed by a health care provider during a cystourethroscopy. Each permanent adjustable transprostatic implant is sold in its own sterile, individual housing, which is designed to couple to a urethroscope. The housing is single use; it is not reloadable or reuseable.

The housing includes a handle for positioning the implant and coupling to the urethroscope, a retractable needle for puncturing the capsule of the prostate gland, and a

tensioning spring within the handle to allow adjustment of the implant during placement to fit a particular individual. Product is a permanent implant made up of standard surgical implantable materials: a nitinol capsular tab, a stainless steel urethral tab, and polyester suture that connects the two tabs.

Product is sold to hospitals or medical facilities to correct a physical deformity. Product must be prescribed and implanted by a physician. The implant and its housing are sold together as an indivisible unit. The urethroscope is sold separately.

Structure of Analysis

To determine whether Company's product is subject to tax, the Department will examine the following questions:

1. Is the item taxable under § 39-26-104(1), C.R.S.?
 - a. Is the item tangible personal property sold or purchased at retail?
2. Is the item eligible for any exemptions?
 - a. Is the item exempt under § 39-26-717, C.R.S. (medical exemption)?

Discussion

Colorado levies sales and use tax on the sale or use of tangible personal property.¹ However, sales and use of certain medical products are exempt. There are at least two exemptions² under which Product could be exempt: (1) prosthetic devices and (2) medical supplies furnished to a patient as part of a licensed provider's³ professional services.⁴

a. *Prosthetic Device.*

Company argues that Product is a prosthetic device. A prosthetic device is an artificial device that replaces a missing or defective human part or function and is designed, manufactured or adjusted to fit a particular individual.⁵ It is a close question whether Product is a prosthetic device. Prior to 2011, Colorado had a separate and general statutory exemption for "therapeutic devices", which were devices that treated an injury or disease.⁶ This is a close question because Product may have been more accurately described as a device that treats or heals an injury or disease, such as a shoe insert that treats high arches, rather than a device we normally think of when discussing prosthetic devices. However, we acknowledge that Product does, in some real sense, "replace" the blocked portion of the urinary tract or replaces the function of that part of the tract. For this latter reason, we conclude that the sale of Product is exempt from tax as a prosthetic device. We note that this view is consistent with how other states view stents of various kinds.⁷

¹ §§ 39-26-104(1)(a) and 202, C.R.S.

² Although the exemption for durable medical equipment may seem applicable, Product does not qualify as durable medical equipment because it is worn in the body.

³ "License provider" means any person authorized to prescribe drugs under the provisions of title 12, C.R.S., and includes, but is not limited to: physicians, dentists, podiatrists, advanced practical nurse, physician assistants, and veterinarians.

⁴ See generally § 39-26-717, C.R.S.

⁵ Department Regulation 1 CCR 201-4, 39-26-717(1)(d), C.R.S.

⁶ Colorado Senate Bill 11-263.

⁷ Many states treat medical stents as prosthetic devices for sales tax purposes. See, eg., Ga. Comp. R. & Regs. 560-12-2-.30 Drugs, Durable Medical Equipment, Prosthetic Devices, and

b. Materials Furnished as Part of a Licensed Provider's Professional Service.

Product may also be exempt as material furnished as part of a licensed provider's professional service. Sales of materials furnished by a licensed provider as part of their professional services to patients are exempt from sales and use tax.⁸ In order to qualify for this exemption, the material must leave the licensed provider's office with the patient.⁹ For example, a licensed provider who provides a catheter for a patient to take home after staying in a hospital is exempt because it is furnished as part of the doctor's professional service to the patient and the catheter leaves the office with the patient.

Product is permanently implanted into patient and, thus, Product leaves the licensed provider's office with the patient. In addition, Product is provided to the patient as part of the licensed provider's professional services. For these reasons, we find that Product is exempt as material furnished to a patient by a licensed provider as part of the provider's professional services to the patient.

Finally, you state that Product is sold to hospitals, surgery centers, and medical facilities. We believe it would be an unwarranted limitation of this exemption to limit its application only to those licensed providers who actually purchase the material. As a result, this exemption also applies to materials purchased by hospitals, medical centers, or surgery centers, so long as the material is furnished by a licensed provider to a patient as part of the provider's professional service. Thus, Company's sales of Product to hospitals and surgery centers under the circumstances described above are exempt.

Miscellaneous

This ruling applies only to sales and use taxes administered by the Department. Please note that the Department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and 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.

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. The ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Other Medical Items; Arizona Private Taxpayer Ruling No. LR05-002, 06/13/2005; Tex. Admin. Code 3.284 Drugs, medicines, medical equipment and devices (Tax Code§ 151.313).

⁸ § 39-26-717(1)(a), C.R.S.

⁹ Department Regulation 1 CCR 201-4, 39-26-717.

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

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.