

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 07-41**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of the Tennessee sales and use tax to the sale of infant warmers and incubators.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

The “Vendor” sells neonatal incubators and infant warmers to the “Taxpayer.” The infant warmers and incubators provide heat in a controlled manner to neonates who are unable to thermo-regulate based on their own physiology. These microenvironments create a healing environment that allows infants time to properly grow without suffering from hypothermia. The incubators and infant warmers compensate for underdeveloped skin and undeveloped nervous systems in neonatal babies by generating heat for and maintaining the core body temperature of the infant, thus allowing the skin to grow properly and the infant’s core body temperature to be maintained. Infants must keep their core body temperature at a constant 37 degrees Celsius. If the temperature goes to high or too low, then the organs can be damaged and death can result. Without infant warmers or incubators, neonatal infants would likely die as a result of several causes, most notably being the lack of thermal heat retained as a result of the infant’s inability to maintain its core body temperature.

The difference between the infant warmers and incubators is the level of enclosure around the infant. Incubators provide an enclosed, temperature-controlled environment, while infant warmers provide an open environment where the heat is generated by infrared measures.

QUESTIONS

1. Is the sale of infant warmers and incubators exempt as prosthetics under Tenn. Code Ann. § 67-6-314(5) (2006) for purposes of the Tennessee sales and use tax laws in effect through December 31, 2007?

2. Is the sale of infant warmers and incubators exempt under Tenn. Code Ann. § 67-6-314 (Supp. 2007) for purposes of the Tennessee sales and use tax laws, as amended by 2007 Tenn. Pub. Acts, Chapter 602, effective January 1, 2008?

RULINGS

1. Yes, the sale of infant warmers and incubators is exempt as prosthetics under Tenn. Code Ann. § 67-6-314(5) (2006) through December 31, 2007.
2. No, the sale of infant warmers and incubators is not exempt under Tenn. Code Ann. § 67-6-314 (Supp. 2007), effective January 1, 2008.

ANALYSIS

Under the Retailers' Sales Tax Act, Tenn. Code Ann. § 67-6-101 *et seq.*, the sale of tangible personal property, which includes infant warmers and incubators, is generally subject to sales and use tax. An item of tangible personal property is exempt for purposes of the Tennessee sales and use tax only if the item is specifically included within the scope of a statutory exemption. The Retailers' Sales Tax Act has been amended by 2007 Tenn. Pub. Acts, Chapter 602, effective January 1, 2008. Accordingly, the exemption provisions applicable to the sale of infant warmers and incubators change as of January 1, 2008. The analysis provided below for the sale of infant warmers and incubators is divided into two sections, the first discussing the Tennessee sales and use tax laws in effect through December 31, 2007, and the second explaining the exemption provisions applicable as of January 1, 2008.

1. The Sales and Use Tax Laws in effect through December 31, 2007

The sale of infant warmers and incubators is exempt as prosthetics under Tenn. Code Ann. § 67-6-314(5) (2006) through December 31, 2007.

Tenn. Code Ann. § 67-6-314(5) (2006) provides an exemption from the sales and use tax for prosthetics. The term "prosthetics" is not defined in the statute; however, the Tennessee Supreme Court has held that subdivision (5) of Tenn. Code Ann. § 67-6-314 "was intended to import generally accepted medical definitions of the terms therein." *Cordis Corp. v Taylor*, 762 S.W.2d 138, 140 (Tenn. 1988) (holding that hydrocephalus valve systems and cardiac pacemakers are exempt as prosthetics under Tenn. Code Ann. § 67-6-314(5)(2006)). Accordingly, the court relied on Stedman's Medical Dictionary, which defines "prosthesis" as "a fabricated substitute for a diseased or missing part of the body," and Tabor's Cyclopedic Medical Dictionary, which defines "prosthesis" in part as "a device to augment performance of a natural function." Based on the statute and case law analysis, devices used to aid a poorly operating general body function, substitute for a missing body part, or augment or enhance an impaired body part or function qualify for purposes of the exemption set out in Tenn. Code Ann. § 67-6-314(5) (2006).

In this case, infant warmers and incubators augment or enhance a natural body function by supplementing the underdeveloped thin skin and undeveloped nervous system of an infant, so that the infant's core body temperature is maintained, and the infant remains warm enough to

survive. Infants must keep their core body temperature at a constant 37 degrees Celsius because if the temperature goes too high or too low, then the infant's organs can be damaged and death can result. Neonatal infants are unable to perform the natural body function of maintaining their core body temperature. As a result, the infant warmers and incubators step in and augment the bodily function of the infant's underdeveloped skin and undeveloped nervous system to maintain the infant's core body temperature, without which, in many cases, the infants would die. Thus, infant warmers and incubators are exempt as prosthetics under Tenn. Code Ann. § 67-6-314(5) (2006), through December 31, 2007.

2. *The Sales and Use Tax Laws as of January 1, 2008*

The sale of infant warmers and incubators is not exempt as of January 1, 2008, because the infant warmers and incubators do not qualify for the exemption for prosthetics under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) or the exemption for durable medical equipment under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007).

Exemption for prosthetics

Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) provides an exemption from the sales and use tax for prosthetic devices for human use. Tenn. Code Ann. § 67-6-102(62) (Supp. 2007) defines the term "prosthetic device" in part as "a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body," which is used to "correct a physical deformity or malfunction" or to "support a weak or deformed portion of the body." In other words, to qualify for an exemption from the sales and use tax as a prosthetic device, an item must be: (1) a replacement, corrective or supportive device; (2) worn in or on the body; (3) used to correct a deformity or malfunction or to support a weak or deformed part of the body; and (4) sold for human use.

In this case, because infant warmers and incubators are not worn in or on the body, they are not defined as a prosthetic device as of January 1, 2008. Accordingly, infant warmers and incubators are not exempt as prosthetics under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007).

Exemption for durable medical equipment

Tenn. Code Ann. § 67-6-102(29) (Supp. 2007) defines "durable medical equipment" as equipment and replacement parts that a person can use repeatedly for a medical purpose, which is not "worn in or on the body" and is generally useful only to a person who is sick or injured. Note that Tenn. Code Ann. § 67-6-102(29) (Supp. 2007) specifically excludes "mobility enhancing equipment" from the definition of "durable medical equipment." Tenn. Code Ann. § 67-6-314(2) (Supp. 2007) provides an exemption from the sales and use tax for durable medical equipment and limits the exemption by requiring the durable medical equipment to be "dispensed pursuant to a prescription" and "for home use."

To qualify for the sales and use tax exemption as durable medical equipment, the medical equipment must be "for home use." Tenn. Code Ann. § 67-6-314(2) (Supp. 2007). Thus, purchases of durable medical equipment by for-profit hospitals, physicians, nursing facilities and treatment centers for use in such facilities do not qualify for the exemption. On the other hand,

purchases by patients of durable medical equipment that is of a nature such that it is generally understood and intended to be used in the patient's home do qualify for the exemption.

In other words, to qualify for an exemption from the sales and use tax under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007), an item must be: (1) defined as "durable medical equipment" as provided in Tenn. Code Ann. § 67-6-102(29) (Supp. 2007); (2) dispensed pursuant to a prescription; and (3) sold for home use.

In this case, infant warmers and incubators are defined as durable medical equipment, thus satisfying the first requirement. However, it is assumed that the infant warmers and incubators are not sold to patients pursuant to a prescription for use in the patient's home, and, therefore, the second and third requirements are not met. Accordingly, infant warmers and incubators do not qualify for the exemption for durable medical equipment for home use dispensed pursuant to a prescription.

CONCLUSION

The sale of infant warmers and incubators is exempt from Tennessee sales and use tax as prosthetics under Tenn. Code Ann. § 67-6-314(5) (2006) through December 31, 2007; however, as of January 1, 2008, the sale of infant warmers and incubators is not exempt from Tennessee sales and use tax because the infant warmers and incubators do not qualify for the exemption for prosthetics under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) or the exemption for durable medical equipment under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007).

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