

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-20**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Sales or use tax on certain purchases by an orthopedic clinic.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is a multiple-physician orthopedic surgery clinic, with offices located in [CITY 1], Tennessee, [CITY 2], Tennessee and [CITY A], [STATE X - NOT TENNESSEE]. The taxpayer requests a letter ruling on whether or not the list of medical equipment, associated parts, and supplies contained under the heading of "Questions Presented" below are subject to Tennessee sales or use tax.

QUESTIONS PRESENTED

Is the purchase of each of these items by the taxpayer subject to Tennessee sales or use tax?

1. Splints
2. Braces
3. Slings
4. Casts
5. Casting materials, including plaster, fiberglass, cast tape, cast padding, gauze wrap, tube gauze, elastic bandages
6. Orthotics and orthotic materials
7. Immobilizers, e.g. knee, elbow
8. Orthopedic stockinettes, elastic stockings
9. Sleeves, collars, pillows, straps, foam plastics used for bracing and support¹
10. Foot/toe cushions and pads
11. Crutches, walkers, canes and associated components, i.e., tips, wheels, pads
12. Post operative shoes, orthopedic walking boots
13. Prosthetics and orthopedic implants, i.e. nails, screws, plates, rods, etc.
14. Sutures
15. Prescription medications, including injectables, oral and topical
16. Hypodermic needles and syringes
17. Electrodes for use in electrical stimulation
18. Scalpels
19. Surgical and examination gloves
20. X-ray film, developing and processing chemicals

RULINGS

When sold or used in Tennessee, the purchase of each of these items is taxable or exempt from tax as indicated below.

1. Splints are exempt from Tennessee sales or use tax.
2. Braces are exempt from Tennessee sales or use tax.
3. Slings are exempt from Tennessee sales or use tax.
4. Casts are exempt from Tennessee sales or use tax.
5. Casting materials, including the items listed above, are exempt from Tennessee sales or use tax.
6. Orthotics and orthotic materials are exempt from Tennessee sales or use tax.
7. Immobilizers are exempt from Tennessee sales or use tax.
8. Orthopedic stockinettes and elastic stockings are exempt from Tennessee sales or use tax.
9. Items used for bracing and support, as listed above, are exempt from Tennessee

¹ The pillows and foam plastics are more specifically described in the "Analysis" section of this ruling.

sales or use tax. With respect to ordinary, common pillows the exemption is applicable only if the taxpayer can demonstrate that the pillows are primarily used for medically necessary applications of support or bracing.

10. Foot or toe cushions and pads are exempt from Tennessee sales or use tax.
11. Crutches, walkers, canes, and associated components are exempt from Tennessee sales or use tax.
12. Post operative shoes and orthopedic walking boots are exempt from Tennessee sales or use tax.
13. Prosthetics and orthopedic implants are exempt from Tennessee sales or use tax.
14. Sutures are exempt from Tennessee sales or use tax.
15. Prescription drugs are exempt from Tennessee sales or use tax.
16. Hypodermic needles and syringes are subject to Tennessee sales or use tax, unless sold for use in dispensing insulin or use in the intravenous administration of prescription drugs, under conditions provided for in T.C.A. § 67-6-320(c). Hypodermic needles and syringes sold for use in dispensing insulin or use in the intravenous administration of prescription drugs, under conditions provided for in T.C.A. § 67-6-320(c) are exempt.
17. Electrodes for use in electrical stimulation, as described hereinafter, are subject to Tennessee sales or use tax.
18. Scalpels are subject to Tennessee sales or use tax.
19. Surgical and examination gloves are subject to Tennessee sales or use tax.
20. X-ray film, developing and processing chemicals are subject to Tennessee sales or use tax.

ANALYSIS

TAX EXEMPTIONS GENERALLY

The Tennessee sales and use tax, generally, is imposed on any sale or use of tangible personal property. T.C.A. § 67-6-201 contains a strong statement of legislative intent that every sale or use of tangible personal property is a taxable privilege. However, there are a large number of exemptions provided in the statute. In *Cape Fear Paging Co. v. Huddleston*, 937 S.W.2d 787 (Tenn. 1996), the Tennessee Supreme Court observed that “[p]ursuant to the Retailers' Sales Tax Act, Tenn. Code Ann. § 67-6-101 - § 67-6-712, a tax is imposed upon the business of selling tangible personal property at retail unless specifically exempted by statute.” Therefore, unless an exemption statute can be found, the sale or use of tangible personal property is subject to tax. In construing an exemption from the sales and use tax, the statute is strictly construed against the taxpayer with a presumption against the exemption. An exemption from taxation will not be read into a taxing statute by implication. *Pan Am World Services, Inc. v. Jackson*, 754 S.W.2d 53 (Tenn. 1988). Therefore, it will be necessary to review the items listed in the ruling request to determine if there is an applicable exemption. If there is not a clear, applicable exemption the item is subject to tax.

ITEMS 1 - 12

An exemption from the sales tax is provided for

[t]he sale of prosthetics, orthotics, special molded orthopedic shoes, walkers, crutches, surgical supports of all kinds, and other similarly medical corrective or support appliances and devices. T.C.A. § 67-6-314(5).

The Department has applied the exemption for orthotics² to devices used to brace, support, or align the skeletal or muscular system. The items numbered 1 through 12 above all appear to normally be used to brace, support, or align the skeletal or muscular system and are thus subject to the exemption if used for that purpose. Additionally, the crutches, walkers, and orthopedic shoes contained items numbered 11 and 12 are specifically enumerated in the exemption statute.

With regard to the pillows listed in the item numbered 9, the taxpayer has indicated that some of the pillows it uses are ordinary, common pillows which are used during physical therapy to position and hold the patient in place during the therapy. Foam (“bolsters”) is used similarly. The taxpayer also uses pre-formed pillows for therapeutic purposes. These pillows are pre-formed in particular shapes, and are used to support certain parts of the body. The major such use is lumbar support for the back. Such items would appear exempt as orthotics. With respect to the ordinary common pillows, however, the taxpayer must be able to demonstrate that the pillows are primarily for use (that is, the majority of their actual use) in medically necessary applications of support or bracing as opposed to the ordinary use of pillows.

ITEMS 13 & 14

With respect to the exemption for prosthetics, in T.C.A. § 67-6-314(5) cited above, the Tennessee Supreme Court has given guidance in *Cordis Corp. v. Taylor*, 762 S.W.2d 138 (Tenn. 1988), where the court relied on two definitions of “prosthesis” as follow:

In Stedman's Medical Dictionary, "prosthesis" is defined as "A fabricated substitute for a diseased or missing part of the body, as a limb, tooth, eye or heart valve." In Tabor's Cyclopedic Medical Dictionary, "prosthesis" is defined as:

1. Replacement of a missing part by an artificial substitute, such as an artificial extremity. SEE: *Boston Arm*.
 2. An artificial organ or part.
 3. Device to augment performance of a natural function such as a hearing aid.
- Id.* at 139.

A device is exempt, therefore, if it replaces a missing body part or augments performance of a natural function. If appears that both the implants, such as the nails, screws, and

² “Orthotics” is defined as “a branch of medicine that deals with the use of specialized mechanical devices to support or supplement weakened joints or limbs.” AMERICAN HERITAGE DICTIONARY (2d College Ed. 1985). In the context of T.C.A. § 67-6-314(5), the term no doubt is intended to refer to orthotic devices.

other items numbered 13, and the item numbered 14, sutures, are either to replace a part or to augment the body's healing process. Therefore, these items are exempt as a prosthetic.

ITEM 15

T.C.A. § 67-6-320(b) states:

There is also exempt from the tax imposed by this chapter any prescribed drug or medicine sold to a practitioner of the healing arts licensed by the state of Tennessee or issued by a licensed pharmacist for use in the treatment of a human being.

Medications, as listed in the item numbered 15, when sold to the taxpayer, a practice of licensed physicians, are exempt under this provision.

ITEM 16

There are two exemptions which apply to the items numbered 16, hypodermic needles and syringes. T.C.A. § 67-6-312 states, in pertinent part:

There is exempt from sales and use tax the sale, at retail, of ... any syringe used to dispense insulin.

Therefore, any hypodermic needle or syringe sold for the dispensing of insulin is exempt.

T.C.A. § 67-6-320(c) states:

There is also exempt from the tax imposed by this chapter disposable medical supplies such as bags, tubing, needles and syringes dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state which are used for the intravenous administration of any prescription drug or medicine and which come into direct contact with the prescription drug or medicine. This exemption applies only to supplies to be used in the treatment of a patient outside of a hospital, skilled nursing facility or ambulatory surgical treatment center.

Under this exemption, hypodermic needles and syringes are exempt only if three conditions are met. (1) The items must be dispensed by a licensed pharmacist under a prescription written for a human being by a practitioner of the healing arts. (2) The items must be for intravenous administration of prescription drugs. (3) The treatment must take place outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center. It is not clear from the facts presented in the ruling request if the taxpayer

purchases of hypodermic needles and syringes would meet all three conditions. All three would have to be met for the exemption to apply.

Unless the hypodermic needles and syringes purchased by the taxpayer qualify for exemption under the provisions of either T.C.A. §§ 67-6-312 or 67-6-320(c), these items are subject to the sales or use tax.

ITEM 17

The item numbered 17 is described as electrodes for use with electrical stimulation. An electrical stimulation unit³ has not been construed by the Department as a prosthetic device, and therefore has been found to be taxable. However, in several prior rulings, these units have been described as electrical stimulating devices used in lieu of or in addition to medication for the relief of pain. This is not a function of the body. In the event that the unit is used to stimulate muscle movement for the purpose of preventing muscle atrophy, for example, to stimulate the inactive muscles of a patient who is paralyzed or comatose, the electrical stimulation unit still does not appear to qualify as a prosthesis. The unit does not replace the muscle or augment its function. Instead, it prevents the emaciation or wasting away of muscle due to non-use. Therefore, the unit is not a prosthetic and is taxable. The electrodes used with the unit likewise would be taxable.

ITEMS 18 - 20

There are no exemptions in the statute which would apply to the items numbered 18 through 20, scalpels, gloves, x-ray film, and x-ray chemicals. As previously explained in this ruling, if the statute does not provide a clear, applicable exemption the item is subject to tax.

Owen Wheeler, Tax Counsel 3

APPROVED: _____
Ruth E. Johnson

DATE: 4-15-98

³ In previous rulings, these devices have been referred to as TENS units. While not specifically referred to as TENS units in the ruling request, the device in question performs a similar function, electrically stimulating the muscle to relieve pain and enhance joint movement.