

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 12-09**

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

The application of the Tennessee sales and use tax to items used in the treatment of venous reflux disease.

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

[TAXPAYER NAME] (the "Taxpayer") is a provider of medical devices and supplies. Among the Taxpayer's products are medical devices and disposable medical supplies for the treatment of venous reflux disease, a condition in which vein valves that are supposed to stop blood from flowing backwards do not function properly and blood becomes pooled in the legs. This causes the veins to expand, a condition known as varicose veins.

The Taxpayer sells the [BRAND NAME CATHETER], which is a minimally invasive single patient use catheter that allows for rapid and uniform ablation of the vein. The [BRAND NAME CATHETER] is inserted into the diseased vein to seal it shut using heat. The [BRAND NAME

CATHETER] does not remain in the body; rather, it is inserted and removed during the same medical procedure.

The Taxpayer also sells three different types of surgery-based procedure packs (the “Packs”) that combine all supplies necessary for venous reflux disease treatment procedures into a single use, sterile package with an Rx label.

The first type of pack (the “First Pack”) includes the following items: [ITEMS].

The second type of pack (the “Second Pack”) includes the same items as the first pack, as well as some combination of additional accessories such as [ITEMS]. The third type of pack (the “Third Pack”) contains only a combination of additional accessories (such as [ITEMS]).

The [BRAND NAME CATHETER] and one of the Packs are typically sold as a unit, for a single charge. However, certain customers may purchase the [BRAND NAME CATHETER] separately, without a Pack.

RULINGS

1. Does the Tennessee sales and use tax apply to the [BRAND NAME CATHETER]?

Ruling: Yes. The [BRAND NAME CATHETER] is subject to the Tennessee sales and use tax.

2. Does the Tennessee sales and use tax apply to the Packs?

Ruling: The Packs are subject to the Tennessee sales and use tax when sold along with the [BRAND NAME CATHETER] for a single charge.

If the First Pack or the Second Pack is sold separately from the [BRAND NAME CATHETER], the charge for the Pack is subject to the Tennessee sales and use tax.

If all of the items in the Third Pack qualify for an exemption from the sales and use tax, then the Third Pack will be exempt from the Tennessee sales and use tax when sold separately from the [BRAND NAME CATHETER]. However, if any item contained in the Third Pack is taxable, the entire charge for the Third Pack is subject to the Tennessee sales and use tax.

ANALYSIS

Under the Retailers’ Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, the retail sale in Tennessee of tangible personal property, including medical devices and supplies, is subject to sales and use tax unless an exemption from taxation applies.

1. [BRAND NAME CATHETER]

The [BRAND NAME CATHETER] is subject to the Tennessee sales and use tax.

In the case of catheters, the most commonly applicable exemption is the exemption for prosthetic devices, found under TENN. CODE ANN. § 67-6-314(1) (2011).¹ However, the [BRAND NAME CATHETER] does not come within the scope of this exemption.

TENN. CODE ANN. § 67-6-314(1) exempts from the sales and use tax “prosthetic devices for human use and repair services for the repair and maintenance of those prosthetic devices.” The term “prosthetic device” is defined as “a replacement, corrective, or supportive device ... worn in or on the body to: (i) artificially replace a missing portion of the body; (ii) prevent or correct physical deformity or malfunction; or (iii) support a weak or deformed portion of the body.” TENN. CODE ANN. § 67-6-102(72)(A) (2011).

Accordingly, for the retail sale of the [BRAND NAME CATHETER] to be exempt from sales and use tax under TENN. CODE ANN. § 67-6-314(1), the [BRAND NAME CATHETER] must: (1) be for human use; (2) constitute a replacement, corrective or supportive device; (3) be worn in or on the body; and (4) be used to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body.

The first requirement is met because the [BRAND NAME CATHETER] is for human use. The second requirement is also met because the [BRAND NAME CATHETER] is a device used to correct venous reflux disease. The fourth requirement is met because the [BRAND NAME CATHETER] is used to correct a malfunction in the valve of the diseased vein.

However, the third requirement is not met because the [BRAND NAME CATHETER] is not worn in or on the body. The catheter is inserted and used to ablate the varicose vein, then removed during the same medical procedure. It does not remain “in or on the body” in order to correct the malfunctioning vein. Accordingly, the [BRAND NAME CATHETER] is not exempt from Tennessee sales and use tax as a prosthetic device.

2. Packs

All Packs are subject to the Tennessee sales and use tax when sold along with the [BRAND NAME CATHETER] for a single charge.

If the First Pack or the Second Pack is sold separately from the [BRAND NAME CATHETER], the charge for the Pack is subject to the Tennessee sales and use tax because each Pack contains items that are taxable.

The facts do not definitively state what may be contained in the Third Pack. If all of the items in the Third Pack qualify for an exemption from the sales and use tax, then the Third Pack will be exempt from the Tennessee sales and use tax when sold separately from the [BRAND NAME CATHETER]. However, if any item contained in the Third Pack is taxable, the entire charge for the Third Pack is subject to the Tennessee sales and use tax.

¹ Some types of catheters may qualify for other medical-related exemptions. This letter ruling will address only the exemption for prosthetic devices, since this is the only one for which the [BRAND NAME CATHETER] potentially qualifies.

TENN. CODE ANN. § 67-6-102(81)(A) provides that the sales price of a good or service equals the “total amount of consideration . . . for which personal property or services are sold.” Thus, if taxable items are bundled with nontaxable items and sold for a single charge, the entire charge is subject to taxation. *See TomKats Catering, Inc. v. Johnson*, 2001 WL 1090516 (Tenn. Ct. App. Sept. 19, 2001).

As explained above, the [BRAND NAME CATHETER] is subject to the Tennessee sales and use tax. Accordingly, when the Taxpayer sells the [BRAND NAME CATHETER] and the Pack as a unit for a single charge, the sales price equals the total consideration paid. Similarly, if the Taxpayer sells a Pack separately from the [BRAND NAME CATHETER], and the Pack contains any taxable items, the sales price will include all consideration paid for the Pack.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: July 10, 2012