

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 14-02**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of the Tennessee sales and use tax exemption under TENN. CODE ANN. § 67-6-314(1) (2013) for prosthetic devices.

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] (the "Taxpayer") is a [REDACTED] company dedicated to the development and commercialization of [A MEDICAL DEVICE]. [REDACTED].

[REDACTED].

There are 3 primary components to the [MEDICAL DEVICE]:

- [A PORTABLE PACK];
- [A WEARABLE COMPONENT]; and
- [ANCILLARY ITEMS].

The [MEDICAL DEVICE] is designed for continuous use throughout the day, and the patient is able to maintain a normal daily routine while treating the disease.¹ [REDACTED].

[REDACTED].

The components of the [MEDICAL DEVICE] are small, weighing six pounds. To maintain mobility, a patient carries the [PORTABLE PACK]. The system can be plugged into the wall while the patient is stationary.

[REDACTED].

The Taxpayer bills the patient's third party insurance provider, managed care company, or in some cases, the patient directly. The Taxpayer provides a monthly invoice that includes all [COMPONENTS OF THE MEDICAL DEVICE] in one consolidated charge. [REDACTED].

[REDACTED].

RULING

Are the Taxpayer's sales of the [MEDICAL DEVICE] exempt from the Tennessee sales and use tax?

Ruling: Yes. The [MEDICAL DEVICE] is exempt from the Tennessee sales and use tax as a prosthetic device.

ANALYSIS

The [MEDICAL DEVICE] is exempt from the Tennessee sales and use tax as a prosthetic device under TENN. CODE ANN. § 67-6-314(1) (2013).

Under the Retailers' Sales Tax Act,² the retail sale in Tennessee of tangible personal property, including medical devices and supplies, is subject to the Tennessee sales and use tax unless an exemption applies.³

¹ [REDACTED].

² Tennessee Retailers' Sales Tax Act, ch. 3, §§ 1-18, 1947 Tenn. Pub. Acts 22, 22-54 (codified as amended at TENN. CODE ANN. §§ 67-6-101 to -907 (2013)).

TENN. CODE ANN. § 67-6-314(1) exempts from the Tennessee 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 including repair and replacement parts for the replacement, corrective, or supportive device worn in or on the body to: (i) [a]rtificially replace a missing portion of the body; (ii) [p]revent or correct physical deformity or malfunction; or (iii) [s]upport a weak or deformed portion of the body.⁴

Thus, to be exempt from the sales and use tax as a prosthetic device, the [MEDICAL DEVICE] 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 satisfied because the [MEDICAL DEVICE] is for human use. The facts indicate that the product is used as a treatment for human adults [REDACTED].

The second and fourth requirements are satisfied because the [MEDICAL DEVICE] constitutes a device that is used to correct a physical deformity or malfunction. The facts indicate that the product is a device that is used to treat [A DISEASE]. Thus, the device is intended to correct a malfunction of the body by [REDACTED].

The third requirement is satisfied because the [MEDICAL DEVICE] is worn on the body. An item is considered “worn on the body” if it is implanted or attached to the body so that it becomes part of the body or is carried by the body and does not hinder an individual’s mobility. Conversely, an item is not considered “worn on the body” if it is placed on an item of mobility that makes the item portable.⁵ For example, a medical item that requires a cart or a pole with wheels to move it around would not be considered to be worn in or on the body.

Here, the [MEDICAL DEVICE]’s [WEARABLE COMPONENT IS] placed directly on a patient [REDACTED]. When mobile, a patient carries the [PORTABLE PACK] on his or her arm; the

³ TENN. CODE ANN. § 67-6-102(76) (2013) defines a “retail sale” as any “sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” The term “sale” is defined under the Tennessee sales and use tax laws in pertinent part as “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration.” TENN. CODE ANN. § 67-6-102(78)(A).

⁴ TENN. CODE ANN. § 67-6-102(70)(A) (2013). Although not relevant to this letter ruling, TENN. CODE ANN. § 67-6-102(70)(B) excludes corrective eyeglasses and corrective lenses from the definition of a “prosthetic device.” Additional information about the application of the Tennessee sales and use tax to specific healthcare products can be found on the Department’s website at <http://tn.gov/revenue/streamlined/healthcarelist1011.pdf>.

⁵ See generally Craig Rook, Health-Care Definitions Issue Paper (Sept. 27, 2006), available at <http://www.streamlinedsalestax.org/uploads/downloads/IP%20Issue%20Papers/2011/IP11012%20Healthcare%20issue%20paper%20on%20the%20body.pdf> (last visited June 6, 2014).

remainder of the [MEDICAL DEVICE] is therefore worn on the body by virtue of being carried by the patient.

Accordingly, the [MEDICAL DEVICE] is exempt from the Tennessee sales and use tax as a prosthetic device under TENN. CODE ANN. § 67-6-314(1).

Note that because the Taxpayer sells all parts of the [MEDICAL DEVICE] for a single monthly price and all of the elements together operate as one functioning unit, the entire sales price is exempt from the Tennessee sales and use tax.⁶ Moreover, because the definition of a “prosthetic device” includes repair and replacement parts for the device, all [ANCILLARY ITEMS] for operation of the [MEDICAL DEVICE] also are exempt from the Tennessee sales and use tax.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: June 18, 2014

⁶ Cf. TENN. CODE ANN. § 67-6-102(79)(A).