

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 97-21**

**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**

Applicability of sales and use tax on medical equipment and supplies.

**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], sells and services medical equipment and supply items such as hospital beds, mattresses, and incontinence pads. The Taxpayer also rents and services

specially designed medical beds, also referred to as acute care therapy units (“therapy units”).

The Taxpayer maintains sales and service locations and an inventory of therapy units at the Tennessee locations. Therapy units are designed specifically for the treatment and prevention of the complications (such as pulmonary complications and poor blood flow) of immobility in critically ill patients; the treatment and prevention of pressure ulcers; and to facilitate the healing of flaps, grafts, burns and to minimize chronic pain. Functionally, all the therapy units provide pressure relief in varying degrees which prevents, reduces and/or reverses skin breakdown. The therapy units provide scientifically engineered weight distribution, support, and movement to aid in the flow of blood circulation to and from injured areas, prevent the accumulation of fluids, and prevent other medical afflictions commonly associated with immobility. In addition, some therapy units provide lateral rotation and pulsation to aid in the flow of bodily fluids.

The Taxpayer rents the therapy units directly to patients for home use, to state owned and operated hospitals and nursing homes for the use of their patients, to privately owned and operated (non-profit and for-profit) hospitals and nursing homes, and to other health care providers. All therapy unit rentals are pursuant to a licensed physician's prescription or work order. Each unit is rented for the exclusive use of the patient named in the physician's order. The type of therapy unit requested varies dependent upon the severity of the patient's needs.

The therapy units prescribed for a particular individual's use in the home would not be appropriate for the use of others present in the home. An individual without a medical illness or injury would not need the pressure relief and support provided by the therapy units. Additionally, the cost of the therapy units would deter use by person without a legitimate medical need for the units. The Taxpayer directly receives payment under Federal Medicare Part B and/or state Medicaid program for the therapy units.

The Taxpayer also sells to individuals, hospitals, and nursing homes, beds designed for comfort which may or may not have side rails and the ability to adjust the plane of the surface of the bed to reposition the body. These beds, as opposed to the therapy units, do not possess any healing or curative qualities and are essentially "hospital beds". These beds are not sold pursuant to a prescription.

The Taxpayer also sells other medical supply items such as mattresses and incontinence pads. The Taxpayer has two types of mattresses: the standard hospital mattress and an alternating pressure mattress. The standard mattress is typically sold as part of the hospital bed, but occasionally is sold individually. The alternating pressure mattress can be rented or purchased. This mattress also helps to prevent or care for decubitus ulcers (bed sores). The incontinence pads are sold in conjunction with the rental of the acute care specialty therapy units.

## **ISSUES**

1. Whether therapy units rented directly to patients, or to health care providers for use by patients, qualify as "medical corrective and support devices" under Tenn. Code Ann. § 67-6-314.
2. Whether leases to patients whose medical expenses are paid for, either directly or through a third party billing agent, such as Medicare or Medicaid are exempt as sales to the state or federal government.
3. Whether the sales of hospital beds, mattresses, and incontinence pads are exempt under Tenn. Code Ann. § 67-6-314.

## **RULINGS**

1. The therapy units rented to patients are considered orthotic devices under Tenn. Code Ann. § 67-6-314 and are exempt from sales or use tax.
2. Tennessee uses TennCare in lieu of Medicaid. Leases paid by TennCare are not exempt from tax unless the units are provided in a state hospital or by a state agency. Leases paid by Medicare are not exempt from tax.
3. Hospital beds are exempt if the Taxpayer can demonstrate that the bed meets a patient's specific medical needs. Plain mattresses, and incontinence pads are not exempt from sales or use tax under Tenn. Code Ann. § 67-6-314. The alternating pressure mattresses are exempt from tax as an orthotic device under Tenn. Code Ann. § 67-6-314.

## **ANALYSIS**

1. Tenn. Code Ann. § 67-6-314(5) provides an exemption from sales tax for, "the 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." The Department has applied the exemption for orthotics to devices used to brace, support, or align the skeletal or muscular system.

Based on the facts provided, the therapy units are designed to prevent and alleviate skin ulceration caused by long-term confinement to bed care and alleviate malfunctioning of the capillaries which is caused by the body's inability to provide proper support. The units are designed to eliminate the problems caused by the inability of the various parts of the body to provide the proper support. The therapy units provide the needed support by means of scientifically engineered weight distribution and movement to aid in the flow of

blood circulation to and from injured areas. Accordingly, the therapy units are tax exempt as a medical support device under Tenn. Code Ann. § 67-6-314(5).

2. Leases or sales paid by Medicare are taxable to the extent that the items sold are subject to tax, because the sale is to the patient. An assignment of the payment of the Medicare insurance benefit to the vendor does not change the nature of the sale.

Effective January 1, 1994, the State of Tennessee was granted a waiver by the Secretary of Health and Human Services and the Health Care Financing Administration to withdraw from the Medicaid program and establish a public health system known as TennCare. The TennCare program replaced the existing Medicaid program with a new program of managed care and expanded health care coverage to include uninsured or uninsurable individuals as well as Medicaid eligible individuals. TennCare is financed by pooling current federal, state and local expenditures for indigent health care including the money that the federal government would have provided Tennessee had it remained in the Medicaid program.

Under the TennCare program, the State of Tennessee no longer directly pays for health care services delivered to Medicaid eligible individuals. Tennessee now contracts with private entities known as managed care organizations (MCOs) to provide TennCare enrollees with basic health care services and supplies. The MCO's, as contractors, provide the medical services and supplies to eligible individuals. Even if the medical supplies could be said to be for the use and benefit of the state under the TennCare program, Departmental Rule 1320-5-1-.55(3) specifically states that sales of tangible personal property to a contractor for the use and later benefit of the State of Tennessee are subject to the tax.

Certain services, such as long term nursing care, mental health and mental retardation care, and certain children's services are not handled under TennCare or through MCO's and their providers. When these exceptions are involved, the State of Tennessee either provides the necessary medical services and medical supplies itself through a state hospital or other state agency, or contracts with a private concern, such as a nursing home, to provide such services and supplies. In cases where the State of Tennessee contracts with providers, such as nursing homes, who provide medical supplies to TennCare enrollees, the contractors' non-exempt purchases of tangible personal property in the form of medical supplies are subject to Tennessee sales and use tax. However, in cases where the State of Tennessee directly purchases tangible personal property in the form of medical supplies and provides such medical supplies to its citizens through state hospitals or other state agencies, such purchases are not subject to sales or use taxes due to the exemption contained in Tenn. Code Ann. § 67-6-329(a)(12).

3. Hospital beds, including the mattress if not sold separately, are exempt if used as a medical support device. Tenn. Code Ann. § 67-6-314(5). The Department has previously held that the Taxpayer must be able to demonstrate that the patient using the bed has a

medical need for its qualities for these beds to be exempt. A bed without the ability to provide a medically necessary support function will not be exempt.

Plain mattresses sold separately and incontinence pads are not exempt under Tenn. Code Ann. § 67-6-314(5) and are subject to tax unless sold or leased to an entity not required to pay Tennessee sales tax. Alternating pressure mattresses help to prevent or care for decubitus ulcers (bed sores). This type of mattress is exempt under Tenn. Code Ann. § 67-6-314(5) if used for support by a human being who otherwise has a decreased ability to move into a different position.

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APPROVED: Ruth E. Johnson  
Commissioner

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