

January 8, 2016

[Taxpayer Representative]
[Address]
[Address]

Re: Formal Ruling 16-01

Dear [Taxpayer Representative]:

This is a formal ruling for your company, [Company], regarding the applicability of sales and use tax to your product, [Product Name]. This ruling is based upon representations in your letter dated [Date], and the enclosed materials.

RULING

Based upon the facts presented, your medical device is not subject to Vermont sales or use tax.

FACTS

Your company (Company) manufactures the [Product Name] (Device). This Device is designed to correct [an internal] deformity [redacted]. Your Device may be permanently implanted to correct this deformation. The Device must be prescribed by a physician.

Your Devices are sold to hospitals and medical facilities. The Device is a single unit, made up of the implant plus its own sterile, individual housing. The housing includes a handle for coupling the Device [redacted] for placement. [Redacted sentence].

The housing portion of the Device includes a [mechanism for placing] the implant in the patient. The housing is single-use and is not [redacted] reusable.

The Federal Food and Drug Administration has cleared the Device to be used together as an indivisible unit. The Centers for Medicare & Medicaid Services (CMS) reimburse the placement of the implant and housing as an indivisible unit under a single procedure code. Health care providers have been reimbursed by CMS for the Device (including the implant and the housing as a single unit) as a "prosthetic implant, not otherwise specified."

DISCUSSION

Vermont's sales and use tax does not apply to "durable medical equipment . . . prosthetic devices and supplies . . . intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities." 32 V.S.A. § 9741(2). The phrases "durable medical equipment" and "prosthetic device" are defined as follows:

(30) Durable medical equipment: means equipment including repair and replacement parts for such equipment, but does not include "mobility-enhancing equipment," which:

- (A) can withstand repeated use; and
- (B) is primarily and customarily used to serve a medical purpose;
- (C) generally is not useful to a person in the absence of illness or injury;
- and
- (D) is not worn on the body.

(35) Prosthetic device: means a replacement, corrective, or supportive device, including repair and replacement parts for such device worn on or in the body to:

- (A) artificially replace a missing portion of the body;
- (B) prevent or correct a physical deformity or malfunction; or
- (C) support a weak or deformed portion of the body.

32 V.S.A. §§ 9701(30), (35).

The regulations provide further definition:

Supplies . . . are exempt if they are . . . primarily used in treatment, including self-treatment, intended to alleviate human suffering or to correct human physical disabilities. Such supplies must be designed primarily to cure, correct, or reduce the severity of human ailments . . .

E. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for such device worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body. . .

Examples of prosthetic devices include artificial limbs, artificial eyes, prescription eyeglasses and contact lenses, hearing aids, dentures and dental appliances, electronic voice producing machines, cranial hair prosthesis, cervical collars, heart valves, pacemakers, orthotic devices, trusses, and fabric and elastic supports and braces.

F. Supplies used in treatment are exempt from the tax. The supply must be therapeutic in nature, not normally used by persons absent illness or injury, and in contrast to durable medical equipment, not capable of repeated usage.

Examples of supplies that are exempt include bandages and surgical dressings, hypodermic syringes and needles, disposable heating pads, and colostomy devices.

Examples of supplies not exempt from the tax are body massage appliances, therapeutic foot baths, room humidifiers and air conditioners, household baby and bathroom scales, athletic supporters, medic alert bracelets, and hot tubs.

Reg. § 1.9741(2), E, F.

The implant portion of the Device is exempt as a prosthetic device, because it is corrective, and is worn in the body to correct a physical deformity or malfunction.

The housing portion of the Device is an exempt supply, because the housing: is used in the treatment of the deformity, by placing the implant; is therapeutic in nature, not normally used by persons absent illness or injury; and in contrast to durable medical equipment, is not capable of repeated usage.

As a result, your Device is exempt from Vermont sales and use tax under 32 V.S.A. § 9741(2).

GENERAL PROVISIONS

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to determine the department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date