

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-32**

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

Application of the Tennessee sales and use tax to the sale of certain equipment used for physical therapy.

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] manufactures and distributes the [MACHINE], a piece of physical therapy equipment consisting of [REDACTED DESCRIPTION OF THE MACHINE]. The [MACHINE] is used by persons with disabilities caused by stroke, spinal cord injury, traumatic brain injury, cerebral palsy, multiple sclerosis, and other diseases. To use the [MACHINE], the individual [REDACTED DESCRIPTION OF THE MACHINE'S USE].

[REDACTED DESCRIPTION OF THE MACHINE'S USE].

The Taxpayer sells the [MACHINE] to both physical therapy providers and to individuals for home use. Physicians often write a prescription for the [MACHINE] as well as a letter of medical necessity. The [MACHINE] may be covered by insurance such as Medicaid, Worker's Compensation, TRICARE (*i.e.*, military service insurance), and the Veterans Administration.

QUESTIONS

1. Are sales of the [MACHINE] exempt from the Tennessee sales and use tax as sales of durable medical equipment if a physician writes a prescription for the equipment and the equipment is for home use?
2. Does the answer to Question #1 depend on whether the [MACHINE] is covered by the purchaser's health insurance?
3. Does the answer to Question #1 change if the [MACHINE] is paid for directly by Medicaid, Tricare, or other form of government payment?
4. Do any other Tennessee sales and use tax exemptions apply to the [MACHINE]?

RULINGS

1. Yes. The [MACHINE] is exempt from the Tennessee sales and use tax as durable medical equipment, provided it is for home use and is sold pursuant to a prescription for human use.
2. No. The Tennessee sales and use tax exemption for durable medical equipment does not depend on whether a particular sale is covered by the purchaser's health insurance.
3. No. The Tennessee sales and use tax exemption for durable medical equipment does not depend on whether a particular sale is paid for directly by Medicaid, TRICARE, or other form of governmental payment. However, regardless of whether the exemption for durable medical equipment applies, sales of the [MACHINE] may be exempt from the Tennessee sales and use tax where such sales are made directly to a governmental entity.
4. No. If a particular sale of the [MACHINE] does not meet the requirements to be exempt as a sale of durable medical equipment or a sale to a governmental entity, the sale will be subject to the Tennessee sales and use tax.

ANALYSIS

1. Exemption for durable medical equipment

The [MACHINE] is exempt from the Tennessee sales and use tax as durable medical equipment under TENN. CODE ANN. § 67-6-314(2) (Supp. 2010), provided it is for home use and is sold pursuant to a prescription for human use.

Under the Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101 *et seq.*, the sale of tangible personal property, which includes equipment such as the [MACHINE], is generally subject to the sales and use tax. An item of tangible personal property is exempt for purposes of the Tennessee sales and use tax only if the item is specifically included within the scope of a statutory exemption.

TENN. CODE ANN. § 67-6-314(2) exempts from the Tennessee sales and use tax “[d]urable medical equipment for home use sold pursuant to a prescription for human use.”

TENN. CODE ANN. § 67-6-102(36)(A) (Supp. 2010) defines “durable medical equipment” as equipment that (1) can withstand repeated use; (2) is primarily and customarily used to serve a medical purpose; (3) is generally not useful to a person in the absence of illness or injury; and (4) is not worn in or on the body. In addition, “durable medical equipment” includes “repair and replacement parts for the equipment,” provided that the “repair and replacement parts do not include parts, components, or attachments that are for single patient use.”¹ TENN. CODE ANN. § 67-6-102(36)(B).²

Accordingly, the [MACHINE] will qualify as durable medical equipment if it (1) can withstand repeated use; (2) is primarily and customarily used to serve a medical purpose; (3) is generally not useful to a person in the absence of illness or injury; and (4) is not worn in or on the body.

The [MACHINE] satisfies each of these requirements. It is designed to withstand repeated use, primarily serves a medical purpose, and is generally not useful to a person in the absence of illness or injury. In addition, the [MACHINE] is not “worn in or on the body.” The commonly understood meaning of the term “worn” is “to bear or have on the body” (for example, to wear a coat). (*See, e.g.*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1417 (11th ed. 2003)). Here, the [MACHINE] merely comes into contact with the user's body; it is not “worn on the body” as the phrase is commonly understood.

The [MACHINE] thus qualifies as “durable medical equipment” for purposes of the Tennessee sales and use tax. However, to be exempt for purposes of the Tennessee sales and use tax, the [MACHINE] must also be (1) for home use; and (2) sold pursuant to a prescription for human use.

¹ Note that “single patient use” means that the parts, components, or attachments are used only by one patient. It does *not* mean that the parts, components, or attachments are only used a single time.

² Note that mobility enhancing equipment is specifically excluded from the definition of “durable medical equipment.” “Mobility enhancing equipment” is defined as “equipment, including repair and replacement parts to the equipment, but does not include durable medical equipment that: (A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle; (B) Is not generally used by persons with normal mobility; and (C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.” TENN. CODE ANN. § 67-6-102(56). Mobility enhancing equipment is exempt from Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-314(6) (Supp. 2010), provided that the equipment is sold pursuant to a prescription for human use. However, the [MACHINE] clearly does not fall within the above definition of “mobility enhancing equipment” and is thus not exempt as such.

All sales of the [MACHINE] that are made for home use pursuant to a prescription for human use will be exempt from the Tennessee sales and use tax. However, the Taxpayer has indicated that it sells the [MACHINE] to physical therapy providers as well as to individuals for home use. The Taxpayer has also indicated that physicians often write a prescription for the [MACHINE]. Sales to physical therapy providers and/or sales that are not made pursuant to a prescription do not meet the requirements for the durable medical equipment exemption under TENN. CODE ANN. § 67-6-314(2) and will be subject to the Tennessee sales and use tax.

In addition, when a home health care provider purchases the [MACHINE], the sale will be subject to the Tennessee sales and use tax regardless of whether the [MACHINE] will ultimately be used in a patient's home. TENN. CODE ANN. § 67-6-352(a) (Supp. 2010) provides that "pharmacies and home health care providers engaged in the business of rendering outpatient healthcare services to human beings are the consumers or users of all tangible personal property or taxable services purchased for use, consumption or rental in providing the health care service." Accordingly, home health care providers are considered the users of products such as the [MACHINE] and must pay sales and use tax on such purchases.³

In summary, the [MACHINE] is exempt from the Tennessee sales and use tax as durable medical equipment provided it is for home use and is sold pursuant to a prescription for human use.

2. Health insurance coverage

The Tennessee sales and use tax exemption for durable medical equipment does not depend on whether a particular sale is covered by the purchaser's health insurance.

As discussed above, TENN. CODE ANN. § 67-6-314(2) exempts from the Tennessee sales and use tax "[d]urable medical equipment for home use sold pursuant to a prescription for human use." The exemption for durable medical equipment contains no requirement that the equipment be covered by the purchaser's health insurance. The use of health insurance to pay for the [MACHINE] is therefore irrelevant in the determination of whether a particular sale will be exempt from the Tennessee sales and use tax as a sale of durable medical equipment.

3. Direct government payment

The Tennessee sales and use tax exemption for durable medical equipment does not depend on whether a particular sale is paid for directly by Medicaid, TRICARE, or other form of governmental payment. However, regardless of whether the exemption for durable medical equipment applies, sales of the [MACHINE] may be exempt from the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-329(a)(4) (Supp. 2010) or TENN. CODE ANN. § 67-6-308 (2006), where such sales are made directly to a governmental entity.

TENN. CODE ANN. § 67-6-329(a)(4) exempts from the Tennessee sales and use tax "[a]ll sales made to the state or any county or municipality within the state." In addition, TENN. CODE ANN. § 67-6-308 exempts from the Tennessee sales and use tax "any direct sale or lease of tangible

³ However, a home health care provider or pharmacy that is exempt from paying sales and use tax under TENN. CODE ANN. § 67-6-322 (Supp. 2010) as a religious, educational, or charitable institution may make tax-exempt purchases of tangible personal property such as the [MACHINE]. TENN. CODE ANN. § 67-6-352(a) (Supp. 2010).

personal property or services to the United States, or any agency thereof created by congress, for consumption or use directly by it through its own government employees.”

TENN. COMP. R. & REGS. 1320-5-1-.55(3) (1983) clarifies that “[s]ales of tangible personal property and taxable services to a contractor or other person for the use and later benefit of the State or a County, or Municipality in this State, are subject to the appropriate Sales or Use Tax.”

Thus, in order for the exemption found in TENN. CODE ANN. § 67-6-329(a)(4) to apply, the sale must be “made to” the state; sales made to individuals and later reimbursed by the state do not fall within the exemption. Similarly, in order for the exemption found in TENN. CODE ANN. § 67-6-308 to apply, the sale must be a “direct sale... of tangible personal property” to the federal government. Sales made to individuals and later reimbursed by the federal government through Medicare or other forms of government payment do not constitute “direct sales” and are therefore not exempt.

Accordingly, where the [MACHINE] is sold directly to a state or federal governmental entity, such sale is exempt from the Tennessee sales and use tax. However, the government exemption does not apply where an individual purchases the [MACHINE] and is reimbursed through Medicare, TRICARE, or other form of governmental payment.

4. Other exemptions

Based on the facts presented, no other Tennessee sales and use tax exemption is applicable to sales of the [MACHINE].

Abigail Sparks
Tax Counsel

APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 7/12/11