

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 00-27**

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 Tennessee sales and use tax to the sale of glucometers and related 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

[TAXPAYER] is a Tennessee limited liability company. The Taxpayer is in the business of supplying glucometers and related supplies to diabetic individuals.¹ Glucometers are obtained pursuant to a treating physician's prescription or order and are used to measure diabetics' blood glucose levels. Diabetics must routinely test these levels so they can take whatever regulatory actions are necessary to keep their glucose in proper balance. Such actions include eating at controlled times, taking oral prescription medications, and injecting themselves with insulin. This is an essential process for diabetics because their bodies' natural ability to measure and regulate blood glucose levels has been impaired, thereby rendering them diabetic. Some diabetic persons must measure their glucose levels as much as ten times a day.

QUESTION

Are glucometers and the related supplies exempt from Tennessee sales and use tax pursuant to T.C.A. § 67-6-314?

RULING

No.

ANALYSIS

The Retailers' Sales Tax Act, T.C.A. § 67-6-101 et. seq., subjects the sale of tangible personal property to taxation unless there is a statutory exemption. Tennessee law provides for several statutory exemptions to the sale of medical items.² Since glucometers and related supplies are not expressly listed under any statutory exemption, the question becomes whether they are exempt under T.C.A. § 67-6-314.

The potentially relevant provision of T.C.A. § 67-6-314 is subsection (5) which provides for an exemption from the sales and use tax for:

(5) The sale of prosthetics, orthotics, special molded orthopedic shoes, walkers, crutches, surgical supports of all kinds, and similarly medical corrective or support appliances and devices.

T.C.A. § 67-6-314(5).

¹ Related supplies provided with glucometers include test strips, which are inserted into glucometers to facilitate chemical analysis, lancets used to obtain blood for testing in glucometers, lancing devices used to insert lancets into the skin, glucometer batteries and control solution used to calibrate glucometers.

² See, e.g., T.C.A. §§ 67-6-304 (Blood and plasma); 67-6-312 (Insulin); 67-6-314 (Medical Equipment and devices for handicapped persons); 67-6-316 (Optometrists, opticians, and ophthalmologists); 67-6-317 (Ostomy products); 67-6-318 (Oxygen); 67-6-319 (Pharmaceutical samples-Free drugs and materials); 67-6-320 (Prescription drugs); and 67-6-352 (Pharmacies and home health care providers).

In order to determine whether glucometers and related supplies are exempt from sales and use tax, the nature of the items must be considered in light of the specific requirements of the statutory exemption. In considering whether glucometers and related supplies are exempt, however, it must be kept in mind that exemptions in tax statutes are strictly construed against taxpayers and the burden is on a taxpayer claiming an exemption to establish that it is actually entitled to an exemption. See, *United Cannery, Inc. v. King*, 696 S.W.2d 526 (1985). See also, *LeTourneau Sales and Service, Inc. v. Olsen*, 691 S.W.2d 531 and *Smokey Mountain Canteen Service, Inc. v. Kizer*, 247 S.W.2d 69 (1952) (holding that exemptions will be strictly construed against taxpayers, that exemptions must positively appear and will not be implied).

Glucometers and related equipment are not exempt as orthotics, orthopedic shoes, walkers, crutches, surgical supports or other similar medical corrective or support devices. Whether the materials are prosthetics, however, requires analysis in light of case law on the subject. Specifically, litigation in Tennessee has expanded the interpretation placed upon the word “prosthetics”. See, *Cordis Corp. v. Taylor*, 762 S.W.2d 138, (1988). In *Cordis Corp.*, the Tennessee Supreme Court addressed the question of what constitutes a “prosthetic” and determined that a device is a prosthetic if it is a substitute for the missing function of a bodily part, whether the part is missing or whether for whatever reason the part is nonconforming or has reduced function. *Cordis v. Taylor*, 762 S.W.2d 138 (1988). Therefore, T.C.A. § 67-5-314(5) must be analyzed in terms of whether the glucometer and related supplies substitute for the missing function of a bodily part.

Neither the glucometer nor the related supplies replace a missing body part or augment the performance of a natural function. To the contrary, glucometers and related supplies are used to measure or monitor. Indeed, the glucometer is not unlike a thermometer, or a blood pressure monitor, each of which is used to measure as opposed to perform a bodily function. Therefore, in light of the fact that exemptions are strictly construed against taxpayers, even under the *Cordis Corp.*’s, supra, interpretation of “prosthetic”, the glucometer and related supplies are not prosthetic devices and are not exempt from the sales tax.

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 8/14/00