

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #06-14**

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

Whether enteral feeding systems and enteral nutritional products are exempt from sales and use tax.

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 a variety of pharmaceuticals and medical products, including enteral feeding systems and enteral nutrition food. An enteral feeding system introduces pre-mixed formulas into the stomach or intestines via a tube for patients who cannot ingest food through their mouth. This system is used for a patient who cannot ingest, but can digest food. Enteral pumps push the food from the feeding container through a tube into the patient's stomach or intestine. The enteral system replaces the mouth and the esophagus by allowing the food to bypass these organs. Special nutritional formulas are developed to be administered through the enteral feeding system. The feeding system is composed of an enteral pump, feeding containers, tubing, needles, syringes, connectors, and adaptors. The pumps can be used over and over again; however, the other components are disposable.

The products are sold by the Taxpayer to wholesalers, government institutions, home health care companies, nursing homes and hospitals. The use of the enteral nutrition feeding systems and food is prescribed by a doctor and employed to introduce food to a patient who is unable to swallow or digest food normally.

ISSUES

1. Are the enteral feeding pumps sold by the Taxpayer exempt from sales and use tax as prosthetic devices?
2. Are the disposable supplies sold by the Taxpayer exempt from sales and use tax as prosthetic devices?
3. Is the enteral nutrition food sold by the Taxpayer to health care professionals, which can only be used when prescribed by a doctor, exempt from sales and use tax?

RULINGS

1. Yes. The enteral feeding pumps are exempt from sales and use tax as prosthetic devices.
2. Yes. The disposable supplies are exempt from sales and use tax as prosthetic devices.
3. No. The enteral nutrition food is subject to sales and use tax.

ANALYSIS

1. Enteral Feeding Pumps are Exempt from Sales and Use Tax as Prosthetic Devices

Tenn. Code Ann. § 67-6-314(5) exempts from sales and use tax medical corrective and support appliances and devices, including prosthetics. A device is prosthetic if it substitutes for the missing function of a bodily part, whether the part is missing, non-functioning, or has reduced function. *Cordis v. Taylor*, 762 S.W.2d 138, 139 (Tenn. 1988). The enteral pump, as part of an enteral nutrition system, substitutes for the mouth and esophagus of a patient and is therefore, exempt from sales tax as a prosthetic pursuant to Tenn. Code Ann. § 67-6-314(5).

2. The Disposable Supplies are Exempt from Sales and Use Tax as Prosthetic Devices

The disposable supplies consist of feeding containers, feeding tubes, needles, syringes, connectors, and adaptors. The disposable supplies are an essential part of the enteral nutrition system which temporarily replaces the mouth and the esophagus, and in some cases, the stomach. When these supplies are used as part of an enteral feeding system, they are exempt as a prosthetic under Tenn. Code Ann. § 67-6-314(5).

3. Enteral Nutrition Food that is used to Treat a Disease and is Prescribed by a Doctor, is Subject to Sales and Use Tax

Tenn. Code Ann. § 67-6-320(a) and (b) provides an exemption from sales and use tax for prescription drugs and medicines:

(a) There is exempt from the tax imposed by this chapter any prescription drug or medicine issued by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state of Tennessee.

(b) There is also exempt from the tax imposed by this chapter any prescribed drug or medicine sold to a practitioner of the healing arts licensed by the state of Tennessee or issued by a licensed pharmacist for use in the treatment of a human being.

To fall under this exemption, the item must be a drug or medicine and must be either (a) sold to a physician or (b) issued by a pharmacist to an individual in accordance with a physician's prescription.

Under the facts provided, the enteral nutrition food produced by the Taxpayer is prescribed by a physician. Therefore, the question is whether the enteral nutrition food is

a drug or a medicine. There is no definition of either a drug or a medicine¹ in the sales and use tax code; therefore, the ordinary meanings of the terms must be used. A drug is defined as a “substance used in the diagnosis, treatment, or prevention of a disease or as a component of a medication.” The American Heritage Dictionary, 4th Edition, 2000. Medicine is defined as “a substance or preparation used in treating disease.” Merriam-Webster's Medical Dictionary, 2002. The question then becomes whether the enteral nutrition food is used in the diagnosis, treatment, or prevention of a disease. In *Feldman v. Huddleston*, 912 S.W.2d 161 (Tenn. Ct. App. 1995), the Court of Appeals found that because dietary supplements did not attack obesity and were actually used to combat the side effects of starvation, they did not qualify for the exemption in Tenn. Code Ann. § 67-6-320. Similarly, in this situation, the Taxpayer's nutritional products are not used to diagnose, nor are they used to either treat or prevent disease; rather, they simply provide nutrition for patients who cannot ingest food through their mouths. Because the Taxpayer's nutritional products constitute food rather than a drug or medicine, they are subject to sales and use tax.

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APPROVED: Loren L. Chumley
Commissioner

DATE: 5/4/06

¹ The definition of a drug will be added to the Code as part of the Streamlined Sales Tax Agreement and will go into effect on July 1, 2007.