

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 97- 37**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of Tennessee sales and use tax to the sale and rental of certain medical equipment.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

A home health care company ("the Company") seeks guidance in the application of the sales and use tax exemptions for medical equipment. Specifically, the Company requests a ruling as to the following items when sold or rented to an individual patient pursuant to a doctor's written prescription:

1. *Hospital beds and related accessories*
2. *Canes*
3. *Insulin pumps*
4. *Glucose monitors*

5. *Aspirators* - Described as equipment used to suction fluid from patients lungs.
6. *Wound care products* - Described as medicated bandages and other specialized wound care items designed to assist in the healing of serious wounds caused by burns and other injuries.
7. *Tens units* - Described as equipment used to stimulate the muscles to prevent atrophy.
8. *Any medical item purchased or rented with Medicaid funds*

ISSUE

Whether these items of tangible personal property as described by the taxpayer are exempt from sales and use tax.

RULINGS

1. Hospital beds and accessories are exempt if they are medically necessary to brace, support, or align the skeletal or muscular system.
2. Canes are exempt as a medical support device.
3. Insulin pumps are exempt as a prosthetic device.
4. Glucose monitors are taxable.
5. Aspirators are taxable.
6. Medicated bandages are taxable. Other wound care products are taxable unless they can be clearly shown to replace or augment the healing process.
7. Tens units are taxable.
8. Tennessee uses TennCare in lieu of Medicaid. Medical items purchased or rented with TennCare funds are not exempt from tax unless the State of Tennessee directly purchases the items and provides them to its citizens through state hospitals or other state agencies.

ANALYSIS

1. *Hospital beds and related accessories*

Tenn. Code Ann. § 67-6-314(5) provides an exemption from sales and use tax for “the sale or repair 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.

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 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.

Mattresses specially designed to help prevent or care for decubitus ulcers (bed sores) as well as other bed accessories are exempt under Tenn. Code Ann. § 67-6-314(5) if used for support by a human being who otherwise has decreased ability to move. The Department has previously held safety rails, plain mattresses sold separately, incontinence pads, overbed tables and trays, and other similar accessories are not exempt.

2. Canes

Canes are exempt under Tenn. Code Ann. § 67-6-314(5). They qualify as a medical corrective or support appliance or device similar to a walker or crutches.

3. Insulin pumps

Insulin and any syringe used to dispense insulin are specifically exempt from sales and use tax under Tenn. Code Ann. § 67-6-312. Items related to the use of insulin, such as insulin pumps and glucose monitors, are excluded from this statutory exemption.

However, in addition to the orthotic and support appliances noted above, Tenn. Code Ann. § 67-6-314(5) provides an exemption for prosthetic devices. A device is prosthetic if it replaces a missing body part or augments the performance of a natural function. *Cordis Corp. v. Taylor*, 762 S.W.2d 138, 139 (Tenn. 1988). *Cordis* held that an implantable cardiac pacemaker is a prosthesis because it replaces or augments the missing or reduced body function of providing a stimulus for the beating of a heart. *Id.* *Cordis* also held that a hydrocephalus valve system is a prosthesis because it is an artificial part which augments the natural flow of cerebral spinal fluid from the brain into the bloodstream. *Id.* The Department has recognized insulin pumps as prosthetic devices used to replace or augment the body’s production of insulin.

4. Glucose monitors

Glucose monitors are taxable. They are not expressly listed under any statutory exemption, nor do they qualify as a prosthesis under Tenn. Code Ann. § 67-6-314(5). As noted above, a prosthesis must replace a missing body part or augment the performance of a natural function. A glucose monitor is used to determine the level of glucose in the body. Unlike the insulin pump, the monitor does not replace or augment a function of the body.

5. *Aspirators*

Under the facts provided, an aspirator is a device used to suction fluid from patients lungs. While this may make it easier for the patient to breath, removing fluid from the lungs is not a natural function of the body. Therefore, aspirators are not exempt under Tenn. Code Ann. § 67-6-314(5). Nor are they exempt under Tenn. Code Ann. § 67-6-318 which provides an exemption for oxygen prescribed or recommended by a doctor and equipment necessary to administer the oxygen. There is nothing to indicate that an aspirator is necessary to administer oxygen. Therefore, aspirators are taxable.

6. *Wound care products*

These are items described by the taxpayer as medicated bandages and other specialized wound care items for patients with serious wounds caused by burns and other injuries. The body's activity in causing closure or healing of a wound is a natural function of the body, and any item which replaces or augments this function will be exempt as a prosthetic device under Tenn. Code Ann. § 67-6-314(5). For example, exemptions have been allowed for surgical sutures, metal clips, and staples because they are used to close a wound or incision, clearly adding to the healing process. On the other hand, items which simply protect the wound while it heals do not actually replace or augment the healing process. Therefore, the Department has previously held that gauze and medicated bandages are taxable.

The taxpayer has listed medicated bandages as one of its wound care products. As noted, bandages do not qualify as a prosthetic device. The taxpayer has not listed any of the other items included in the category of wound care products. Therefore, a determination cannot be made as to whether those items are prosthetic. In deciding on which specific items to collect tax, the taxpayer should remember that exemptions are construed strictly against the taxpayer and in favor of the state. *Quaker Oats Co. v. Jackson*, 745 S.W.2d 269, 271 (Tenn. 1988).

One further exemption should be considered with regard to medicated bandages. Prescription drugs are exempt from tax:

- (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.

Tenn. Code Ann. § 67-6-320(a), (b). To be exempt, then, the item must: 1) be a drug or medicine; 2) be prescribed by a physician; and 3) be sold to a physician or issued by a pharmacist to an individual.

Under the facts provided, the medicated bandages are sold pursuant to a doctor's written prescription. If they are also issued to the patient by a licensed pharmacist, then the second and third requirements are satisfied.

Turning to the first requirement, the term "drug" is not defined within the sales and use tax provisions, however, the Tennessee Food, Drug and Cosmetics Act defines drug to mean "[a]rticles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man...." TENN. CODE ANN. § 53-1-102(9)(B). Medicine is not defined in the Tennessee Code, therefore its ordinary meaning should be used. *Feldman v. Huddleston*, 912 S.W.2d 161, 163 (Tenn. App. 1995). One definition of medicine quoted with approval by the Court of Appeals is "any drug or other substance used in treating disease, healing, or relieving pain." *Id.* To qualify for the exemption, a drug or medicine must be curative. *Id.*

Applying these definitions, it appears that the medication within the bandage, by itself, might be medicine used in healing. However, the bandage is used for protection rather than treatment of the wound. If an item is purchased for both purposes, it is the primary intended purpose which governs taxability. See, Opinion of the Attorney General 84-213. As noted above, exemptions must be construed strictly against the taxpayer and in favor of the state. *Quaker Oats Co.*, 745 S.W.2d at 271. It appears, from the facts available, that medicated bandages are more protective than curative and do not qualify as a drug or medicine for purposes of this exemption.

7. Tens units

The transcutaneous electric nerve stimulation unit (Tens unit) has not been construed as a prosthetic device, and therefore has been found to be taxable. However, in prior rulings the tens unit has been described as an electrical stimulating device used in the relief of pain, instead of or in addition to medication. This is not a function of the body.

The taxpayer, however, describes the tens unit as equipment used to stimulate muscle movement for the purpose of preventing muscle atrophy. For example, the tens unit may be used to stimulate the inactive muscles of a patient who is paralyzed or comatose. The unit does not replace the muscle or augment its function. Instead, it prevents the emaciation or wasting away of muscle due to nonuse. Under this alternative use, the tens unit still does not appear to qualify as a prosthesis and therefore is taxable.

8. Any medical item purchased or rented with Medicaid funds

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).

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