

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #99-35**

**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 certain medical equipment.

**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] is engaged in the business of selling medical equipment to hospitals, clinics and surgical centers located in Tennessee. The taxpayer seeks guidance in the application of Tennessee sales and use tax regarding two of its products: [PRODUCT 1] and [PRODUCT 2].

[PRODUCT 1] is a postoperative autotransfusion system. It is a sterile, single-use system of postoperative collection and reinfusion of shed blood from patients who have

undergone orthopedic surgical procedures. It provides an alternative method of blood replacement to supplement predeposited, hemodilution and intra-operative autologous blood programs.

[PRODUCT 2] is a chest drainage system. Chest drainage is required after open heart surgery, thoracic surgery, and chest traumas to evacuate any pooling blood, as well as accumulating air. The purpose of a chest drainage device is to help reestablish normal negative pressures by removing air and fluid. To restore the chest to its normal condition, all air and fluid must be removed and the source of an air leak must be closed.

[PRODUCT 2] is comprised of a disposable one-piece, 3-chamber setup, which provides a series of sections to separate the functions of fluid collection, water seal and suction control.

### **QUESTIONS**

1. Is [PRODUCT 1] subject to Tennessee sales and use tax?
2. Is [PRODUCT 2] subject to Tennessee sales and use tax?

### **RULINGS**

1. Yes.
2. Yes.

### **ANALYSIS**

Under the Retailers' Sales Tax Act, T.C.A. §67-6-101 et. seq., the sale of tangible personal property is generally subject to sales and use tax unless an exemption applies.

Several specific exemptions apply to the sale of medical equipment and supplies. Exempt items include, for example, blood and plasma sold by an I.R.C. § 501 (c)(3) organization, insulin, ostomy products, oxygen, and prescription drugs. T.C.A. §§67-6-305, 67-6-312, 67-6-317, 67-6-318, and 67-6-320. It is clear that none of these exemptions apply to the autotransfusion system or the chest drainage system described in the facts.

Also exempt from sales and use tax is:

“...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.”

T.C.A. § 67-6-314(5)

The exemption for prosthetic devices applies to any item that replaces a missing body part or augments the performance of a natural bodily function. *Cordis Corp. v. Taylor*, 762 S.W.2d 138, 139 (Tenn. 1988). The exemption does not apply to surgical tools.

The remaining items listed in T.C.A. § 67-6-314(5) – orthotics, orthopedic shoes, walkers, crutches and surgical supports – are all devices used to brace support, or align the skeletal or muscular system. While the term “surgical supports” is not defined in the statute and has not been found in a medical dictionary, the subsequent language “and other similarly medical corrective or support appliances and devices” indicates that the listed items have the common element of being corrective or support devices or appliances for the skeletal or muscular system. To the extent there is any uncertainty regarding the scope of the term “surgical support,” the exemption is to be construed against the taxpayer and will not be implied. *Hutton v. Johnson*, 956 S.W.2d 484, 488 (Tenn. 1997). Every presumption is against exemption, and any well founded doubt defeats a claimed exemption. *Id.*

While [PRODUCT 1] is a device used in connection with orthopedic surgical procedures, it is not an orthotic, surgical support or other similarly medical corrective or support appliance or device. It is also not a prosthetic. It is a device used postoperatively to collect and reinfuse the patient’s shed blood. It does not brace, support or align the body; nor does it replace a body part or augment a natural function.

Likewise, [PRODUCT 2] is clearly not an orthotic, surgical support or other similarly medical corrective or support appliance or device. It is also not a prosthetic. [PRODUCT 2] is used after surgery or chest traumas to remove pooling blood and accumulating air from the chest. It does not provide a support function and does not replace a body part or augment a natural function.

Accordingly, [PRODUCT 1] and [PRODUCT 2] are subject to Tennessee sales and use tax.

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APPROVED: Ruth E. Johnson  
Commissioner

DATE: 12/16/99