



North Carolina Department of Revenue

Roy Cooper  
Governor

Ronald G. Penny  
Secretary

April 9, 2020

[Redacted]

Re: [Redacted]  
Private Letter Ruling Request  
FEIN: [Redacted]

Dear [Redacted]:

The Department has completed its review of your request for a written determination on behalf of your client, [Redacted] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your initial request as well as any supplemental information provided.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the tax law to a specific set of existing facts furnished by you on behalf of Taxpayer. This written determination is applicable only to the taxpayer addressed herein and as such has no precedential value except to the taxpayer to whom the determination is issued.

**Overview and Relevant Facts**

You state Taxpayer "serves as the [Redacted] strategic business unit for certain [Taxpayer] products. To that end, [Taxpayer] manufactures and distributes [Redacted] devices (e.g. [Redacted] devices) that deliver non-invasive treatment for promoting healing in fractured bones and spinal fusions.

[Redacted]

"The [Redacted] devices include the following three products which are the subject of this ruling request:

April 9, 2020  
Page: 2

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED] These non-invasive portable devices are intended to be used as part of a home treatment program prescribed by a physician. Federal law restricts these devices to sale by or on the order of a physician.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [Taxpayer's] [REDACTED] stimulators are designed to use a low level of [REDACTED] signals to activate the body's natural healing process."

The [REDACTED] Devices "are worn on the body and offer portability . . . rechargeable battery operation, integrated component design, patient monitoring capabilities and the ability to cover a large treatment area without factory calibration for specific patient application."

**Issue**

Are Taxpayer's [REDACTED] Devices classified as prosthetic devices, and, therefore, specifically exempted from North Carolina sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(12)a?

**Applicable Statutes and References**

Under Article 5 ("Article") of the North Carolina Revenue Act ("Act")<sup>1</sup>, N.C. Gen. Stat. § 105-164.1 *et. seq.*, Subchapter VIII: Local Government Sales and Use Tax, and Chapter 1096 of the 1967 Session Laws, State, applicable local, and applicable transit rates of sales and use taxes are

<sup>1</sup> References to the Act and North Carolina General Statutes are based on the laws in effect as of the date of issuance of this private letter ruling except as otherwise noted herein.

██████████  
██████████  
April 9, 2020  
Page: 3

imposed on a retailer's net taxable sales or gross receipts, as applicable, of tangible personal property, certain digital property, and certain services at the percentage rates listed in N.C. Gen. Stat. § 105-164.4(a). N.C. Gen. Stat. §§ 105-164.3(15), 105-164.3(123), 105-164.3(195), 105-164.3(223), 105-164.4, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.3(159) defines the term "prosthetic device" as "[a] replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device. The conditions are as follows:

- a. Artificially replaces a missing portion of the body.
- b. Prevents or corrects a physical deformity or malfunction.
- c. Supports a weak or deformed portion of the body."

N.C. Gen. Stat. § 105-164.13(12)(a) provides an exemption from sales and use tax, in part, for "[t]he sale at retail and the use, storage, or consumption in this State of . . . [p]rosthentic devices for human use."

### Ruling

Based on the information furnished, Taxpayer's ██████████ Devices are regenerative stimulators approved by the FDA to stimulate bone growth. Each device is worn externally on the human body and is used to correct a physical deformity or malfunction. Each of Taxpayer's ██████████ Devices, as described above, meets the definition of the term "prosthetic device" and, as such, Taxpayer's sales of ██████████ Devices are specifically exempted from North Carolina sales and use tax under the provisions of N.C. Gen. Stat. § 105-164.13(12)(a).

As a matter of information, North Carolina is a member of the Streamlined Sales Tax Governing Board, Inc. ("Streamlined Sales Tax"), a multistate effort to simplify and modernize sales and use tax administration. There are various appendices which are a part of the Streamlined Sales Tax Agreement on the Streamlined Sales Tax website, one of which is a Health Care Item List - Appendix L, as amended May 2, 2018. The Healthcare Item List reflects various health care items, describes the purposes of some of the items, and specifies how member states should classify the items. The Healthcare Item List shows that "Bone Growth Stimulators—External--Worn" should be classified by member states as a prosthetic device. The Health Care Item List is available on the Streamlined Sales Tax website at: <https://www.streamlinedsalestax.org/>.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Issued on behalf of the Secretary of Revenue  
By the Sales and Use Tax Division