



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 3, 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]
Request for Written Determination
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a private letter ruling on behalf of [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 or available to the Department.

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 Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You advise, "[Taxpayer] is the provider of a device referred to as the [REDACTED] ["Product"]. The [Product] is a device that physicians prescribe to increase the size of the upper airway by advancing the mandible, to support and correct snoring and obstructive sleep apnea [REDACTED]. [REDACTED]. [REDACTED]. It is a temporary device, meaning that while it is worn it supports and corrects the problem/issue."

Further, you provide that "the [Product] device is prescribed by a physician. A patient will subsequently go see a dentist and the dentist will make a custom fit device with the help of an impression of the human mouth for that patient. The device uses the teeth and the facial structure to support the movement of the jaw [REDACTED]. Each device is sold to a dentist office and then is custom fit for the patient by the dentist in accordance with a prescription."

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Issue

Is Product sold by Taxpayer a prosthetic device as defined by N.C. Gen. Stat. § 105-164.3(191) and, as such, exempt from sales and use tax as provided by N.C. Gen. Stat. § 105-164.13(12)?

Applicable Statutes and References

Under Chapter 105 of the North Carolina General Statutes, Article 5 (“Article”) of the North Carolina Revenue Act (“Act”)¹, N.C. Gen. Stat. § 105-164.1 *et. seq.*, Subchapter VIII: Local Government Sales and Use Tax, N.C. Gen. Stat. § 105-463 *et. seq.*; and Chapter 1096 of the 1967 Session Laws; State, local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer’s net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the applicable State, applicable local, and applicable transit rates of sales and use tax. N.C. Gen. Stat. §§ 105-164.4, 105-164.6, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.3(191) 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) provides an exemption from sales and use tax for “[s]ales of . . . [p]rosthetic devices for human use. . . .”

Ruling

Based on the information herein, Product is a “prosthetic device” as defined in N.C. Gen. Stat. § 105-164.3(191) and qualifies for an exemption from sales and use tax as provided by N.C. Gen. Stat. § 105-164.13(12).

This ruling is based solely on the facts submitted or available 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 Taxpayer may not rely on it. If Taxpayer relies on this letter ruling and the Department discovers, upon examination, that the fact situation of Taxpayer is different in any material aspect from the facts and circumstances given in this letter ruling, the letter ruling will not afford Taxpayer any protection. It should be noted that this letter ruling 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

¹ 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.