



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

May 7, 2012

Account ID: [REDACTED]
Federal ID: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]

Dear Mr. [REDACTED]

We have your May 24, 2010 letter requesting a private letter ruling regarding the application of sales tax to sales of certain medical items and instructional materials sold by your above referenced client. You stated, "[REDACTED] has initiated sales of its manufactured medical device products to hospitals, doctors, surgeons, and clinics in North Carolina." You also inquired as to the taxability of such products "to exempt organizations, such as hospitals. . . ." We also have your letter of August 24, 2010 in which you state "[i]n furtherance of our request for a private letter ruling, please be advised, that to the best of our knowledge and belief, the taxpayer is currently not under audit by or in litigation with the Department. Additionally, for this taxpayer there have been no deductions or claims for refund which the Department has denied the taxpayer which relates to the taxpayer's inquiry."

You further advised, "[w]e . . . are unable to determine if the provisions of the existing sales tax regulations (G.S. 105-164.13(12)) address these particular types of medical devices used for site specific pain management. . . ." G. S. 105-164.13(12) exempts the "sales of any of the following items:

- a. Prosthetic devices for human use.
- b. Mobility enhancing equipment sold on a prescription.
- c. Durable medical equipment sold on prescription.
- d. Durable medical supplies sold on prescription.

G.S. 105-164.3(30b) defines 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.

- a. Prevents or corrects a physical or malfunction.
- b. Supports a weak or deformed portion of the body."

On behalf of your client, you have asked for direction regarding the taxability of the following manufactured medical device products when sold to hospitals, doctors, surgeons, and clinics in North Carolina:

[REDACTED]
[REDACTED]
[REDACTED]

- Introducers for [REDACTED] needles
- [REDACTED] needles
 - [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] Needles – [REDACTED] [REDACTED]
- Introducer for [REDACTED] needle
- [REDACTED] Needles
- [REDACTED] Needles
- [REDACTED] [REDACTED] Needles
- [REDACTED] Aprons
- Racks & hangers
- Lead Sleeves/Thyroid protectors
- [REDACTED] Protection Gloves
- [REDACTED] Protection Eyewear
- Anatomical Models

It is our opinion that the items listed above are not prosthetic devices as defined by statute and are subject to tax when sold to hospitals, doctors, surgeons, and clinics in North Carolina. Pursuant to Sales and Use Tax Technical Bulletin Section 11-4, “[s]ales to physicians . . . hospitals, or similar users or consumers of medical supplies, and medical instruments, medical equipment, . . . to diagnose, prevent, treat or cure disease are subject to [the] applicable State and local sales or use tax.” Some [REDACTED] are exempt from sales and use tax as prosthetic devices; however, based on your client’s website and our search of the internet, the [REDACTED] at issue appear to be medical supplies used by medical personnel during a medical procedure.

In the event any of the above listed items are sales of bundled transactions, you should refer to G.S. 105-164.4D for the proper taxation. G.S. 105-164.3(1i) defines bundled transaction as “[a] retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one non-itemized price. Products are not sold for one non-itemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

- a. A product and any packaging item that accompanies the product and is exempt under G. S. 105-164.13(23).
- b. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
- c. A sale of a product accompanied by a transfer of another product with no additional consideration.
- d. A product and the delivery or installation of the product.
- e. A product and any service necessary to complete the sale.”

In your letter, you state, “[a]lso sold are instructional materials on the use of these [REDACTED] that consist of written, visual, and demonstration models. Are these products subject to sales tax?” North Carolina does not have a specific exemption for sales of such instructional materials. While you did not state such, for purposes of this response, we assume the instruction materials constitute printed material sold for a separate charge to purchasers; therefore, the sales price of the instructional materials are subject to the general State and local sales or use tax.

The final question in your letter was “[a]re sales of the types of products [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] to exempt organizations, such as hospitals, subject to sales tax?” North Carolina does not have a blanket exemption for sales to for profit or not for profit hospitals. Additionally, for purposes of this response, we assume that the safety glasses are not prescription safety glasses. G.S. 105-164.13(52) provides an exemption for “[i]tems subject to sales and use tax under G.S. 105-164.4, other than electricity, telecommunications service, and ancillary services. . . if all of the following conditions are met:

- a. The items are purchased by a State agency for its own use. . . .

- b. The items are purchased pursuant to a valid purchase order issued by the State agency that contains the exemption number of the agency and a description of the property purchased, or the items purchased are paid for with a State-issued check, electronic deposit, credit card, procurement card, or credit account of the State agency.
- c. For all purchases other than by an agency-issued purchase order, the agency must provide to or have on file with the retailer the agency's exemption number.

Sales of the aforementioned products to a hospital owned by the State or another State agency would qualify for the exemption afforded per G.S. 105-164.13(52) provided your client receives and retains the proper exemption documentation.

This letter 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 letter 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 letter ruling, the letter ruling will not afford the 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.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: Director of Sales Tax
Assistant Director of Sales Tax