

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2009-17 ST
December 1, 2009

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ISSUES

Sales Tax – Sales of Medical Devices

A company ("Taxpayer") is seeking a ruling as to whether a particular medical device is subject to Indiana sales tax when sold in Indiana.

Authority: [IC 6-2.5-3-7](#); [IC 6-2.5-5-8](#); [IC 6-2.5-5-18](#); [IC 6-2.5-5-25](#).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer is a medical equipment manufacturer that sells a medical device primarily to physicians and hospitals. The device is used by physicians in the treatment of medical conditions. Specifically, the device removes plaque build-up from arteries.

The device is composed of two components. The first component of the device is a drive unit operated by a surgeon. The drive unit is a battery-operated device controlled by a single on/off thumb switch. The drive unit may be used on more than one patient. The second component of the device is a single-use catheter designed to be inserted into a patient's legs or arms. The catheter contains a tiny blade at the tip, which when activated by the drive unit will rotate and remove excess plaque from an arterial wall or blood vessel. The catheter is disposed of immediately following use. The physician or the hospital charges the patient for the catheters used during the procedure, but may or may not enumerate a charge for the device.

Based on the foregoing facts, Taxpayer requests that the Department rule on the following questions:

1. Are both of the components of the device, the drive unit and the catheters, exempt as a medical device under [IC 6-2.5-5-18](#)?
2. If either or both of the device components are not exempt, may a hospital purchase for resale, whether or not the components are separately itemized on the patient's bill?
3. If either or both of the device components are not exempt as a medical device, will another exemption apply when purchased by a hospital in Indiana?

DISCUSSION

In general, [IC 6-2.5-5-18](#)(a) provides:

Sales of durable medical equipment, prosthetic devices, artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical supplies and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

In order to be exempt as a medical supply or device, the item must be sold to a purchaser pursuant to a valid prescription. Implicit in that requirement is the necessity that the item be transferred for consideration to a purchaser who possesses a prescription for the item.

Based on the above authority and facts, when sold to a physician or hospital, the device is not sold pursuant to a prescription and, therefore, such a transaction is not exempt under [IC 6-2.5-5-18](#). When used as part of a medical procedure on a patient with a prescription for the procedure, the device, including both components, is not transferred into the possession of the patient. The drive unit remains the property of the physician or hospital and the catheters are discarded following the procedure. The patient may be charged for the use of the device, including both components, during the procedure, but there is no transfer of the device into the patient's possession. As such, transactions involving the device are not exempt under [IC 6-2.5-5-18](#)(a).

Indiana recognizes an exemption from sales tax regarding property acquired for resale. [IC 6-2.5-5-8](#)(b) provides:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

The Department's regulation, found at [45 IAC 2.2-5-15](#)(c)(1), clarifies the purchase for resale exemption in the following pertinent way:

The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendering of services or performance of work with respect to the property. (Emphasis added.)

Unquestionably, when the device is purchased by physicians or hospitals, it is purchased with the intention of

using it as part of services performed on patients. As part of the procedure performed by physicians, the catheters are rendered valueless and discarded following use. As stated previously, the drive unit is never transferred into the possession of the patient. As such, no part of the device, including both components, is resold to the patient. Accordingly, even if charges for the device, or either component, are stated separately on an invoice to the patient, transactions involving the device are not exempt under [IC 6-2.5-5-8](#).

No other specific exemption applies to the purchase of the device by a hospital. However, if the hospital is a non-profit entity, then the purchase of the device may be exempt. [IC 6-2.5-5-25\(a\)](#) provides:

Transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

- (1) is an organization described in section 21(b)(1) of this chapter;
- (2) primarily uses the property or service to carry on or to raise money to carry on its not-for-profit purpose; and
- (3) is not an organization operated predominantly for social purposes.

RULING

The device, including its two components, the drive unit and the catheters, is not exempt as a medical device under [IC 6-2.5-5-18](#). A physician or hospital may not purchase the device or either of its two components exempt under [IC 6-2.5-5-8](#), regardless of whether the device or the components are separately stated on a patient's bill. [IC 6-2.5-5-25](#) provides an exemption from sales tax if the entity purchasing the device is a qualifying non-profit entity that uses the device to carry on its non-profit purpose.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. 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 respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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