

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2010-02 ST
February 18, 2010

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ISSUES

Sales / Use Tax – Customized Medical Devices

A company ("Taxpayer") is seeking an opinion as to whether transactions involving customized cutting guides used as part of orthopedic surgeries are subject to Indiana sales and use tax.

Authority: [IC 6-2.5-2-1\(a\)](#); [IC 6-2.5-5-8\(b\)](#); [IC 6-2.5-5-18\(a\)](#); [45 IAC 2.2-5-36\(a\)\(3\)-\(5\)](#).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer, is a corporation engaged in the manufacture and sale of customized cutting guides for use in knee replacement surgeries. Taxpayer manufactures cutting guides based on the individual patient's knee anatomy. The guides assist surgeons in making accurate bone cuts that are specific to the individual patient. The customized guides do not remain as inventory with a hospital or practitioner, but are shipped to the practitioners a few days before the surgeries and cannot be used on anyone but the patients for which they are individually designed. The guides do not stay in the patients' bodies after the surgeries.

DISCUSSION

Taxpayer's sales of the cutting guides involves Taxpayer's sales of the cutting guides to medical professionals or practitioners, and the practitioners' use, as part of surgical procedures, of the cutting guides on patients. In general, [IC 6-2.5-2-1\(a\)](#) imposes a sales tax on retail transactions made in this state. More specifically, unless a specific exemption applies, all purchases of tangible personal property, including surgical instruments, equipment, supplies, including those consumed in professional use, and any other apparatuses used in the practice of surgery or medicine by a licensed practitioner are subject to sales tax. [45 IAC 2.2-5-36\(a\)\(3\)-\(5\)](#).

Regarding transactions between Taxpayer and practitioners, an exemption from Indiana sales and use tax exists for purchases for resale under [IC 6-2.5-5-8\(b\)](#). However, in order to qualify for the exemption, the purchaser must acquire the property "for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property." Implicit in the exemption is that the medical supplies or devices be transferred into the possession of the patient and not consumed in professional use as part of the practitioner's services rendered to the patient. In the instant case, the cutting guides are used by practitioners and disposed of after the surgeries. Such being the case, there is no "resale, rental, or leasing" of the property to patients. Accordingly, unless a practitioner's purchase of the cutting guides qualifies for another exemption contained on the Form ST-105, General Sales Tax Exemption Certificate, Taxpayer's sales of the cutting guides to practitioners is subject to Indiana sales and use tax.

Regarding transactions between practitioners and patients, [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.

However, again, implicit in the exemption is that the medical supplies or devices be transferred into the possession of patients and not consumed in professional use as part of the practitioners' services rendered to patients. With regard to transactions between practitioners and patients involving Taxpayer's cutting guides, the users of the devices are practitioners, not patients. The cutting guides are not transferred into the possession of patients at any point in time. Following the procedure, the guides are disposed of by the practitioners. Since the devices are never transferred to patients, no sales of tangible personal property have taken place with regard to the cutting guides, distinct from their use as part of the practitioners' professional services. As such, the device

has not been sold to the patient. The device is consumed as part of a service. Accordingly, the exemption found at [IC 6-2.5-5-18](#) does not apply because there is no transaction on which sales tax is imposed.

RULING

Unless a practitioner's purchase of Taxpayer's customized cutting guides qualifies for an exemption found on Form ST-105, transactions involving Taxpayer's sales of customized cutting guides to practitioners are subject to Indiana sales and use tax.

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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