

## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2010-07 ST  
September 1, 2010

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

Sales and Use Tax – Medical Supplies and Devices

A company ("Taxpayer") is seeking a ruling that certain orthopedic implants and related products sold and/or distributed to hospitals and surgical facilities are not subject to Indiana sales and use tax.

**Authority:** [IC 6-2.5-3-2](#); [6-2.5-3-4](#); [IC 6-2.5-5-18](#); [IC 6-2.5-5-21](#); [IC 6-2.5-5-25](#); [45 IAC 2.2-5-36](#)

**STATEMENT OF FACTS**

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer is a company engaged in distributing orthopedic implants and related products. In particular, Taxpayer further provides:

When the company sells an implant device, it may also provide the purchaser with use of specialized instruments required for installing the implant. There is no separate charge for instruments provided under these arrangements. Many of the company's customers in Indiana are state-licensed hospitals and other nonprofit healthcare institutions.

**DISCUSSION**

In support of its request, Taxpayer argues, inter alia, that its transactions involving orthopedic implants and related products, which Taxpayer concludes qualify as "durable medical equipment," are exempt from Indiana sales and use tax pursuant to [IC 6-2.5-5-18\(a\)](#) and [IC 6-2.5-3-4\(a\)](#). In the alternative, Taxpayer argues, inter alia, that its transactions involving orthopedic implants and related products are exempt from Indiana sales and use tax pursuant to [IC 6-2.5-5-25\(a\)\(1\)](#) and [IC 6-2.5-5-21\(b\)\(1\)](#).

In general, [IC 6-2.5-5-18\(a\)](#) provides an exemption from Indiana sales tax for certain medical equipment, supplies and devices:

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.

Correspondingly, pursuant to [IC 6-2.5-3-4\(a\)](#), if an item qualifies for the above exemption, and the item is being used, stored, or consumed for the purpose for which it qualifies for such exemption, the item's storage, use, and/or consumption is also exempt from Indiana use tax.

In support of its first contention, Taxpayer takes issue with the Department's Revenue Ruling #2010-02ST, which, in pertinent part, declared that "implicit in the exemption [found at [IC 6-2.5-5-18\(a\)](#)] 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." Taxpayer maintains that such a reading of the statutory provision at issue "is in error because the plain language of the exemption statute contains no such condition or limitation."

The Department does not concur with Taxpayer's analysis or conclusion. The Department's regulation, found at [45 IAC 2.2-5-36\(a\)\(3\)-\(5\)](#) provides:

The gross retail tax shall apply to the following purchase transactions made by licensed practitioners:

- (3) Surgical instruments, equipment and supplies.
- (4) Bandages, splints, and all other medical supplies consumed in professional use.
- (5) X-Ray, diathermy, diagnostic equipment, or any other apparatus used in the practice of surgery or medicine.

On its face, the Department's regulation clearly states that medical equipment, devices and supplies consumed in professional use are subject to Indiana sales tax. On its face, [IC 6-2.5-5-18\(a\)](#) clearly states that the exemption provided by that statutory provision relates only to sales of certain medical equipment, devices and supplies prescribed by someone licensed to issue a prescription. Since a prescription is issued and applies only to the patient to whom it has been written, the only reasonable interpretation of the statute read in conjunction with the regulation is that sales of exempt items to the holder of the prescription (i.e., the patient) are the only sales covered by the exemption. Since the transactions between Taxpayer and its customers (i.e., hospitals and surgical facilities) do not constitute sales to the patient, and do not represent sales prescribed by a person licensed to issue such a prescription, the transactions are not exempt under [IC 6-2.5-5-18\(a\)](#), regardless of whether the items sold qualify as durable medical equipment or other medical supplies and devices.

Accordingly, Taxpayer's transactions with hospitals, surgical facilities, and practitioners involving surgical instruments, equipment, and supplies consumed in professional use do not qualify for an exemption under [IC 6-2.5-5-18\(a\)](#) and are subject to Indiana sales tax.

With regard to Taxpayer's next argument, [IC 6-2.5-5-25\(a\)](#) provides an exemption from Indiana sales tax

related to certain hospital transactions:

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.

Hospitals licensed by the Indiana State Department of Health and nonprofit hospitals both qualify as exempt organizations under [IC 6-2.5-5-21\(b\)\(1\)](#). Taxpayer argues that its transactions with such organizations constitute leases and are exempt from Indiana sales tax pursuant to [IC 6-2.5-5-25\(a\)](#). Despite its own admission that "[t]here is no separate charge for instruments provided under these arrangements," Taxpayer argues that the transactions do qualify as leases. The requisite consideration, Taxpayer argues, is represented by Taxpayer's client's "promise to indemnify [Taxpayer] for instrument loss, damage or destruction." Alternatively, Taxpayer argues that the purchase of an implant by Taxpayer's client serves as consideration for both the purchase of the implant as well as the instruments used to install the implants. Taxpayer summarizes this argument thusly:

The instruments are transferred to hospitals and other surgical facilities in Indiana in connection with transactions involving the sale of a wide variety of orthopedic implant products. As a matter of basic contract law, when, in exchange for a healthcare institution's promise to pay for an orthopedic implant, [Taxpayer] promises (i) to sell an implant device, and (ii) to transfer the related instrumentation, both promises by [Taxpayer] are supported by consideration.

As to its first argument on this point, the Department does not concur with Taxpayer's analysis or conclusion. In the absence of a lease agreement or some sort of indicia of a lease, the mere promise by Taxpayer's client to compensate Taxpayer in the event the instruments are damaged or destroyed is not necessarily indicative of a lease or any other particular transaction, nor would such a promise, standing alone, serve as the requisite consideration of a valid lease.

As to its second argument on this point, the Department does not concur with Taxpayer's analysis or conclusion. By Taxpayer's own admission, there is no charge associated with its client's use of the instruments. More to the point, there is no indication that Taxpayer's invoices to its clients reflect anything more than the sales of orthopedic implants. As such, the Department cannot conclude that consideration exists to support a valid lease. As such, Taxpayer's use of such instruments (i.e., Taxpayer's distribution of such instruments) is subject to Indiana use tax provisions, pursuant to [IC 6-2.5-3-2](#).

Accordingly, Taxpayer's transactions with hospitals, surgical facilities, and practitioners involving surgical instruments, equipment, and supplies consumed in professional use do not qualify for an exemption under [IC 6-2.5-5-25\(a\)\(1\)](#) and are subject to Indiana use tax.

#### **RULING**

Taxpayer's transactions with hospitals, surgical facilities, and practitioners involving surgical instruments, equipment, and supplies consumed in professional use do not qualify for an exemption under [IC 6-2.5-5-18\(a\)](#) or [IC 6-2.5-5-25\(a\)\(1\)](#) and 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.

*Posted: 10/27/2010 by Legislative Services Agency*  
An [html](#) version of this document.