

Letter of Findings: 04-20100597
Gross Retail Tax
For the Years 2007, 2008, and 2009

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ISSUE

I. PillCams – Gross Retail Tax.

Authority: IC § 6-2.5-5-18; [45 IAC 2.2-5-28\(h\)](#); [45 IAC 2.2-5-36](#).

Taxpayer argues that its purchases of "PillCams" were exempt from Gross Retail Tax.

STATEMENT OF FACTS

Taxpayer is a medical practice specializing in the practice of gastroenterology. The Department of Revenue conducted an audit review of Taxpayer's business records concluding that Taxpayer should have been paying sales tax on the purchase of devices used in Taxpayer's medical practice. Taxpayer disagreed with a portion of the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for its protest. This Letter of Findings results.

I. PillCams – Gross Retail Tax.

DISCUSSION

Taxpayer purchases a devices called "PillCam SB" from a company called "Given Imaging." As described in the vendor's literature, "PillCam SB is the most widely used patient-friendly tool for visualization of the entire small bowel and is the standard of care for detecting small bowel abnormalities." The patient's use of the device is described as follows:

Patients typically begin fasting at midnight the day before the procedure. The following morning the patient will arrive at the doctor's office to be prepped for the procedure. The nurse will fit the patient with a comfortable [SensorBelt] containing sensors, with easy-fasten straps for quick adjustments and removal. After being fitted with the belt, the patient will be given a glass of water to help swallow the vitamin-sized pill. After the patient has successfully swallowed the PillCam video capsule, they will be able to resume daily activities. After eight hours, the patient will return to the physician's office with the SensorBelt and DataRecorder. The PillCam video capsule passes naturally with a bowel movement, usually within 24 hours. The physician will then download images from the DataRecorder for review.

The audit found that Taxpayer should have been paying sales tax on the purchase of the PillCams pursuant to [45 IAC 2.2-5-36](#) which states as follows:

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

- (1) All office furniture, equipment and supplies.
- (2) Drugs of a type not requiring a prescription, when not purchased for resale.
- (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.

(b) The purchase of items for resale by the physician or surgeon. In order to resell items the practitioner must be licensed as a retail merchant, and must quote the selling price of any items separately from the charge for professional service.

Taxpayer disagrees citing to IC § 6-2.5-5-18 as follows:

(a) As used in this section, "legend drug" means a drug as defined in [IC 6-2.5-1-17](#) that is also a legend drug for purposes of [IC 16-18-2-199](#).

(b) As used in this section, "nonlegend drug" means a drug (as defined in [IC 6-2.5-1-17](#)) that is not a legend drug.

(c) Sales of legend drugs and sales of nonlegend drugs are exempt from the state gross retail tax if:

- (1) a registered pharmacist makes the sale upon the prescription of a practitioner who is licensed to prescribe, dispense, and administer those drugs to human beings or animals in the course of his professional practice; or
- (2) the licensed practitioner makes the sales.

(d) Sales of a nonlegend drug are exempt from the state gross retail tax, if:

- (1) the nonlegend drug is dispensed upon an original prescription or a drug order (as defined in [IC 16-42-19-3](#)); and
- (2) the ultimate user of the drug is a person confined to a hospital or health care facility.

(e) Sales of insulin, oxygen, blood, or blood plasma are exempt from the state gross retail tax, if the

purchaser purchases the insulin, oxygen, blood, or plasma for medical purposes.

(f) Sales of drugs, insulin, oxygen, blood, and blood plasma are exempt from the state gross retail tax if:

- (1) the purchaser is a practitioner licensed to prescribe, dispense, and administer drugs to human beings or animals; and
- (2) the purchaser buys the items for:
 - (A) direct consumption in his practice; or
 - (B) resale to a patient that the practitioner is treating, in the case of sales of legend or nonlegend drugs.

Taxpayer states that "PillCams are purchased by the Taxpayer and resold to patients pursuant to a prescription issued by one of [Taxpayer's] physicians." Taxpayer points out that the PillCams are "new technology replacing x-ray dyes, which have been traditionally treated as exempt medical supplies." Taxpayer concludes that the PillCams "are used by the patient and qualify for the exemption as a medical supply."

Rather than classifying the "PillCams" as either legend or non-legend drugs under IC § 6-2.5-5-18, the Department believes that the devices are taxable because the "PillCams" are properly thought of as "medical equipment," and the "PillCams" are not "directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body." [45 IAC 2.2-5-28\(h\)](#). As an item of diagnostic equipment, the "PillCams" are subject to sales tax pursuant to [45 IAC 2.2-5-36](#) which states:

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

- (1) All office furniture, equipment and supplies.
- (2) Drugs of a type not requiring a prescription, when not purchased for resale.
- (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.

(b) The purchase of items for resale by the physician or surgeon. In order to resell items the practitioner must be licensed as a retail merchant, and must quote the selling price of any items separately from the charge for professional service. (Emphasis added).

The use of the "PillCams" is prescribed to Taxpayers' patients but the "PillCams" do not act to alleviate the patients' medical condition. Instead, the "PillCams" are a diagnostic tool purchased by the healthcare provider. As such, the Department's audit correctly found that Taxpayer should have paid sales tax when it purchased the devices.

FINDING

Taxpayer's protest is respectfully denied.

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