
DEPARTMENT OF STATE REVENUE**Revenue Ruling #2011-02 ST
September 8, 2011**

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ISSUES

Sales and Use Tax – Exemptions Applicable to Sales of Medical Supplies and Devices

Authority: [IC 6-2.5-1-2](#); [IC 6-2.5-1-11.5](#); [IC 6-2.5-4-15](#); [IC 6-2.5-5-8](#); [IC 6-2.5-5-18](#); [45 IAC 2.2-5-15](#); [45 IAC 2.2-5-36](#); Sales Tax Information Bulletin #48 (August 2008)

A company ("Taxpayer") is seeking determinations regarding the following questions:

Question #1

Are sales of durable medical equipment, prosthetic devices, artificial limbs, orthopedic devices or other medical supplies and devices to licensed physicians and hospitals for the subsequent resale to patients exempt from Indiana sales and use tax when the enumerated item may only be sold or transferred by the purchasing physician or hospital to a patient pursuant to a prescription or order from a licensed practitioner?

Question #2

Are sales of medical devices to licensed physicians and hospitals exempt from Indiana sales tax when the purchasing physician or hospital issues the seller a valid exemption certificate indicating that the purchase is for resale?

Question #3

Are sales of kits containing medical devices, as well as the instruments and supplies necessary to implant the medical devices, retail transactions if the kits are sold for a single price and the purchase price or selling price of the exempt medical items exceeds 50% of the total purchase price or selling price of the kit?

DISCUSSION**Answer #1**

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 durable medical equipment, prosthetic devices, artificial limbs, orthopedic devices or other medical supplies and devices, the item(s) at issue 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. When sold to a physician or hospital, the device is not sold to a purchaser who possesses a prescription for the item and, therefore, such a transaction is not exempt from Indiana sales and use tax pursuant to [IC 6-2.5-5-18](#).

Answer #2

In general, 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 Sales Tax Information Bulletin #48, which relies on the Department's regulation found at [45 IAC 2.2-5-36](#), further clarifies the exemption as it applies to purchases made by medical practitioners:

A licensed practitioner who purchases tangible personal property subject to sales tax (such as nonprescription drugs, bandages, etc.) but intends to resell such property to a patient, may make such purchases exempt from sales tax by using an Indiana exemption certificate.

To resell such 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. Sales tax must then be collected from the patient on the separately stated charges for such items.

If the practitioner does not separately state the charges for the supplies when billing the patient, the practitioner is liable for the sales/use tax when the licensed practitioner purchases the supplies.

Pursuant to the same bulletin, the resale exemption does not extend to surgical instruments, equipment and supplies consumed in professional use. This restriction is further supported by the Department's regulation found at [45 IAC 2.2-5-15\(c\)\(1\)](#), which provides:

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.)

Subject to the authority above, sales of medical devices to licensed physicians and hospitals are exempt from Indiana sales tax when the purchasing physician or hospital issues the seller a valid exemption certificate indicating that the purchase is for resale.

Answer #3

[IC 6-2.5-1-2\(a\)](#) provides that a "retail transaction" means a transaction of a retail merchant that constitutes selling at retail as described in [IC 6-2.5-4-1](#), that constitutes making a wholesale sale as described in [IC 6-2.5-4-2](#), or that is described in any other section of [IC 6-2.5-4](#).

[IC 6-2.5-4-15\(b\)](#) provides that a person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction. The term "bundled transaction" is defined at [IC 6-2.5-1-11.5\(b\)](#) to include retail sales of two or more products, except real property and services to real property, that are distinct, identifiable, and sold for one non-itemized price. The term is further defined at [IC 6-2.5-1-11.5\(d\)\(3\)](#) to specifically exclude retail sales that include both taxable and non-taxable tangible personal property, any of which is classified, among other things, as drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies for which the seller's purchase price or the sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or the total sales price of the bundled tangible personal property.

Based on such authority, sales of kits containing medical devices, as well as the instruments and supplies necessary to implant the medical devices, are not retail transactions subject to sales and use tax if the kits are sold for a single price and the purchase price or selling price of the exempt medical items exceeds 50% of the total purchase price or selling price of the kit. In instances where sales of the medical kits do not represent retail transactions, it should be noted that any ordinarily taxable tangible personal property provided in the medical kits may subject the manufacturer or distributor of the medical kits to the use tax provisions found at [IC 6-2.5-3](#).

RULING

Sales of durable medical equipment, prosthetic devices, artificial limbs, orthopedic devices or other medical supplies and devices to licensed physicians and hospitals for the subsequent resale to patients are not exempt from Indiana sales and use tax pursuant to [IC 6-2.5-5-18](#) even when the enumerated item may only be sold or transferred by the purchasing physician or hospital to a patient pursuant to a prescription or order from a licensed practitioner.

Sales of medical devices to licensed physicians and hospitals are exempt from Indiana sales tax when the purchasing physician or hospital issues the seller a valid exemption certificate indicating that the purchase is for resale.

Sales of kits containing medical devices, as well as the instruments and supplies necessary to implant the medical devices, are not retail transactions subject to sales and use tax if the kits are sold for a single price and the purchase price or selling price of the exempt medical items exceeds 50% of the total purchase price or selling price of the kit. In instances where sales of the medical kits do not represent retail transactions, it should be noted that any ordinarily taxable tangible personal property provided in the medical kits may subject the manufacturer or distributor of the medical kits to the use tax provisions found at [IC 6-2.5-3](#).

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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