

## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2016-01ST  
August 9, 2016

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 - Exemptions Applicable to Sales of Medical Supplies and Devices.**

**Authority:** [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-5-18](#); [45 IAC 2.2-5-27](#); Sales Tax Information Bulletin #48 (May 2016)

A company ("Taxpayer") is seeking a determination regarding whether its medical product is a device that is exempt from Indiana gross retail and use tax pursuant to [IC 6-2.5-5-18\(c\)\(4\)](#).

## STATEMENT OF FACTS

Taxpayer is a Texas corporation that has developed a device (the "Product") to address sleeping and breathing issues. Taxpayer describes the Product further as follows:

[Taxpayer] is the provider of a device . . . that physicians prescribe to increase the size of the upper airway by advancing the mandible, to support and correct snoring and obstructive sleep apnea, also known as Continuous Open Airway Therapy. The device keeps the airway open by moving the jaw slightly forward in order to prevent abnormal breathing since the soft tissues have collapsed. It is a temporary device, meaning that while it is worn it supports and treats the problem/issue.

[Product] is prescribed by a physician. A patient will subsequently go see a dentist and the dentist will make a custom fit device with the help of an impression of the human mouth for that particular patient. The device uses the teeth and the facial structure to support the movement of the jaw thus allowing the airway to stay open. Each device is custom fit for the patient by the dentist in accordance with a prescription.

## DISCUSSION

Taxpayer requests that the Department find that the Product is a device or piece of equipment that it is exempt from Indiana gross retail and use tax pursuant to [IC 6-2.5-5-18\(c\)\(4\)](#).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. [IC 6-2.5-2-1\(b\)](#). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." [IC 6-2.5-3-2\(a\)](#).

In general, all purchases of tangible personal property are subject to sales and/or use tax unless an enumerated exemption from sales and/or use tax is available. [IC 6-2.5-5-18\(c\)](#) provides in pertinent part:

Transactions involving the following are exempt from the state gross retail tax if the end user acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) that is required by law for the transaction from a licensed practitioner:

...

(4) Other medical supplies or devices that are used exclusively for medical treatment of a medically diagnosed condition, including a medically diagnosed condition due to:

- (A) injury;
- (B) bodily dysfunction; or
- (C) surgery.

Taxpayer maintains that the Product would fall under the category of "other medical supplies or devices" found in [IC 6-2.5-5-18\(c\)\(4\)](#). [45 IAC 2.2-5-28](#) expands on this exemption, providing in relevant part:

(g) The sale to the user of medical equipment, supplies, or devices prescribed by one licensed to issue such a prescription are exempt from sales and use tax.

(h) The term "medical equipment, supplies or devices", as used in this paragraph, are those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body.

The Department's Sales Tax Information Bulletin #48 further clarifies the exemption for "other medical supplies and devices," as it applies to purchases made by patients pursuant to a prescription by a licensed practitioner:

The following sales and/or rental of durable medical equipment, devices, drugs, and other supplies are exempt from Indiana sales and use tax provided the end user patient acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) that is required by law (if such property requires a prescription or drug order by law, subject to the conditions set out below) for the transaction from a licensed practitioner:

- Other medical supplies or devices used exclusively for medical treatment of a medically diagnosed condition due to injury, bodily dysfunction, or surgery. The phrase "used exclusively" means the intended usage of the device by the manufacturer, not the use made of the device by the purchaser. Therefore, items such as hot tubs, beds, mattresses, and other items that have general usage would typically not be exempt. However, if modifications are made to such items for medical treatment described in this bullet point, the department may exempt such tangible personal property used in modifying such device, but not the device itself

Based on the description provided by Taxpayer, the Product would meet the requirements under [IC 6-2.5-5-18\(c\)\(4\)](#) and [45 IAC 2.2-5-28](#) for being an exempt medical device. However, in order for the Product to be exempt under [IC 6-2.5-5-18](#), the Product must be sold or rented to an end user patient pursuant to a valid prescription or drug order. Implicit in that requirement is the necessity that the item be transferred for consideration to a purchaser who possesses a prescription for the item. [45 IAC 2.2-5-27](#) clarifies the definition of "prescribed" as follows:

(a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.

(b) Definition: The term "prescribed" shall mean the issuance by a person described in [subsection (a)] of a certification in writing that the use of the medical equipment[,] supplies[,] and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body.

Taxpayer does not state whether Taxpayer sells the Product directly to the end user patient. If the Product is not sold to an end user purchaser who possesses a prescription for the item, the transaction would not be exempt from Indiana sales and use tax pursuant to [IC 6-2.5-5-18](#). However, the product may still be exempt under [IC 6-2.5-5-8\(b\)](#), which 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.

If Taxpayer sells the Product to dentists or dental offices, and the Product is subsequently resold to an end user patient, then the Product would be exempt from tax when sold to the doctor or hospital under [IC 6-2.5-5-8\(b\)](#). The Taxpayer shall require the dentist or dental office purchasing the Product to provide a valid exemption certificate (Form ST-105) at the time of purchase in order to qualify for this sale for resale exemption.

### RULING

Taxpayer's Product is exempt as a medical device pursuant to [IC 6-2.5-5-8](#) so long as Taxpayer sells the Product to the end user patient pursuant to a prescription. If that is not the case, Product may be exempt under [IC 6-2.5-5-8\(b\)](#) as a sale for resale as long as the dentist or dental office provide an ST-105 to Taxpayer noting that sale for resale is the reason for the exempt purchase.

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**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: 08/31/2016 by Legislative Services Agency*

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