
Opinion of the Tax Commissioner

Date Issued: April 25, 2001

Opinion No: 00-0006

Tax: Sales

Subject: Medical Devices

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This is a request for an opinion of the Tax Commissioner. It concerns the application of sales tax on the sales of medical products to customers.

FACTUAL BACKGROUND

- (1) The taxpayer, a XXXX corporation based in XXXX, sells medical products to physicians, hospitals, and medical facilities.
- (2) The medical products are used in less invasive surgical procedures.
- (3) Medical products sold are (1) drainage catheters and accessories such as tubes for drainage bags, and introducer systems and (2) Vena cava filter that is permanently implanted to prevent pulmonary embolism.
- (4) The taxpayer collects sales or use taxes on sales of these medical products.
- (5) Some customers are requesting refunds of sales or use tax paid.

QUESTION FOR WHICH OPINION IS REQUESTED

Whether or not the sales of the medical products stated above are resold and thus exempt from sales or use tax?

OPINION

The Ohio sales and use tax law for determining tax treatment of sales of medical devices is defined in R.C. 5739.02(B)(19). In pertinent part, such definitions are:

"Sales of artificial limbs or portion thereof, breast prostheses, and other prosthetic devices for humans; braces or other devices for supporting weakened or nonfunctioning parts of the human body; wheelchairs; devices used to lift wheelchairs into motor vehicles and parts and accessories to such devices; crutches or other devices to aid human perambulation; and items of tangible personal property used to supplement impaired functions of the

human body such as respiration, hearing, or elimination. No exemption under this division shall be allowed for nonprescription drugs, medicines, or remedies; items or devices used to supplement vision; items or devices whose function is solely or primarily cosmetic; or physical fitness equipment. This division does not apply to sales to a physician or medical facility for use in the treatment of a patient. (Emphasis added)

From the information provided, it appears that the drainage catheters and vena cava filter units are exempted from sales or use tax as devices for supporting weakened or nonfunctioning parts of the human body. However, the last sentence of R.C. 5739.02(B)(19) states that the exemption does not apply to sales to a physician or medical facility for use in the treatment of a patient. Accordingly, it is the opinion of the Tax Commissioner that such units are not exempt from sales or use tax unless the purchaser is statutorily exempt from tax or provides XXXX XXXX a properly executed exemption certificate as outlined in Ohio Administrative Code 5703-9-03.

This opinion applies only to this taxpayer. The tax consequences stated in this opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the taxpayer to be aware of such changes. R.C. 5703.53(E).

Thomas M. Zaino
Tax Commissioner