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LETTER RULING 2019-2

LR 2019-2. Eligibility for sales and use tax exemption for implantable medical devices sold to for-profit medical facilities.

You are a for-profit medical facility that purchases implantable medical devices for subsequent sale to patients. You have specified that the implantable devices are sold to patients who possess a prescription rather than used to render professional medical services to that patient. You specifically ask whether the purchase of such a device by a for-profit medical facility will be exempt from tax under the exemption for “prosthetic devices” under Section 4(1)(k) of the General Sales Tax Act, MCL 205.54a(1)(k), and Section 4(1)(p) of the Use Tax Act, MCL 205.94(1)(p).

Summary of law. The Michigan General Sales Tax Act, MCL 205.51 *et seq.*, and the Michigan Use Tax Act, MCL 205.91 *et seq.*, are complementary tax statutes that generally levy a 6% tax on the sale or use of tangible personal property. Both Acts provide an exemption for “prosthetic devices.” MCL 205.54a(1)(k); MCL 205.92b(q). The Acts similarly define a “prosthetic device” as a “replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, dispensed pursuant to a prescription, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following: (i) Artificially replace a missing portion of the body; (ii) Prevent or correct a physical deformity or malfunction of the body; or (iii) Support a weak or deformed portion of the body. MCL 205.51a(q); MCL 205.92b(q).

Implantable medical devices are only “dispensed” when sold to a patient. The term “dispensed” as used within the definition of “prosthetic device” is undefined, but is commonly understood to mean “to divide and share out according to a plan; to deal out in portions; administer; to prepare and distribute.” Merriam-Webster Dictionary, <<https://www.merriam-webster.com/dictionary/dispensed>> (accessed July 18, 2019). The particular placement and grammatical use of the term “dispensed” in this context requires the device be administered contemporaneous with or prior to the transaction for which the exemption is claimed rather than in some future transaction. In other words, because the implantable device is not being prepared or administered when purchased by the for-profit medical facility, the device is not being “dispensed” in that transaction. Instead, the device is only prepared and administered when sold to the patient who actually uses the device pursuant to a valid prescription. Accordingly, only the sale of an implantable medical device to a patient will be eligible for the “prosthetic device” exemption.

The purchase of implantable medical devices for sale to patients is an exempt sale for resale. While the purchase of the implantable medical device by a for-profit medical facility is not an exempt prosthetic device, other exemptions may apply. Indeed, while tax is generally

levied on any “sale at retail” in Michigan, the definition of a “sale at retail” specifically excludes a sale for purposes of resale. MCL 205.51(1)(b). A for-profit medical facility may therefore claim a valid resale exemption for the purchase of implantable medical devices that will later be resold to a patient. This, however, is limited to facts establishing that the implantable device will actually be resold. If, instead, the implantable device is used by the facility to render a professional medical service to the patient, then the resale exemption is not applicable and the device is subject to tax. Mich Admin Code, R 205.111(2). The determination of whether an implantable device is sold or otherwise used to render a professional service is based on the facts of each case and, where both an implantable medical device and medical services are rendered in a single transaction, the “incidental to service” test may be applied. *Catalina Mktg Servs Corp v Dep’t of Treasury*, 470 Mich 13 (2004). Because in this case you have specified that a retail sale of the implantable device does, in fact, occur, the implantable devices are eligible to be purchased under a valid resale exemption claim. See Revenue Administrative Bulletin 2016-14 for additional information regarding exemption claims.

Conclusion

An implantable medical device that is sold to a for-profit medical facility is not an exempt prosthetic device because the device is not being “dispensed” in that transaction; rather, the device may only be an exempt prosthetic device in the sale between the medical facility and the patient. A for-profit medical facility may, however, claim a valid resale exemption in circumstances where the facility resells that device and does not consume the device in rendering medical services to the patient.

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