

Rulings of the Tax Commissioner

Document Number: 13-234
Tax Type: Retail Sales and Use Tax
Brief Description: Medical products sold to hospitals and clinics in Virginia
Topics: Clarification; Durable Medical Equipment Exemption; Exemptions; Nonprofits
Date Issued: 12/18/2013

December 18, 2013

Re: Request for Ruling: Retail Sales and Use Tax

Dear *****:

This is in response to your letter in which you request a ruling on the application of the retail sales and use tax to a product sold by ***** (the "Taxpayer") to hospitals and clinics in Virginia. I apologize for the delay in responding to your request.

FACTS

The Taxpayer is a medical device company that sells a full line of vascular products. The Taxpayer requests a ruling on the application of the retail sales tax to Gel-Block Embolization Pledgets sold to hospitals and clinics. The Gel-Block Embolization Pledgets are an embolic device consisting of two radially compressed gelatin foam pledgets that are delivered through a catheter system for the use in embolization of hypervascular tumors and arteriovenous malformations in individuals. The Federal Food and Drug Administration (FDA) classifies the Gel-Block pledgets as a Class II medical device. The Taxpayer requests a ruling on whether it is required to collect and remit the sales tax on the sale of this medical device to hospitals and clinics.

RULING

Durable Medical Equipment Exemption

Virginia Code § 58.1-609.10 10 provides an exemption for "prosthetic devices and.. . other durable medical equipment and devices, and related parts and supplies specifically designed for those products . . . when such items or parts are purchased by or on behalf of an individual for use by such individual."

Title 23 of the Virginia Administrative Code 10-210-940 G addresses purchases on behalf of an individual and states, "In order to be deemed a purchase on behalf of

an individual, the item must be specifically bought for the individual. If items are purchased in bulk and then dispensed to individual patients, no exemption is applicable even if the item is modified or fitted for a specific individual." The fact that an item is purchased from a medical equipment supplier or is purchased on a physician's prescription is not dispositive of its exempt status.

For-Profit Hospitals and Clinics

The Gel-Block Embolization Pledgets is deemed a medical device. Thus, the Taxpayer may sell the Gel-Block Embolization Pledgets exempt of the tax to for-profit hospitals and clinics in accordance with *Va. Code* § 58.1-609.10 10 when purchased on behalf of an individual for use by such individual. Pursuant to Public Document (P.D.) 00-215 (12/7/00), a taxpayer's purchase documentation must include patient identification information at the time of purchase in order for the purchase to be deemed made on behalf of an individual. Also see P.D. 12-95 (6/1312).

Nonprofit Exemption

Virginia Code § 58.1-609 11 provides an exemption from the retail sales and use tax that includes the sale of tangible personal property to nonprofit hospitals, nonprofit clinics, and nonprofit nursing homes. Therefore, all sales, including purchases of medical devices regardless of whether or not the device is purchased on behalf of an individual, to nonprofit hospitals, nonprofit clinics and nonprofit nursing homes are exempt from the sales and use tax. These entities must provide the Taxpayer a Sales and Use Tax Certificate of Exemption letter issued by the Department. This letter verifies the entity's exempt status and includes the tax exempt number necessary for making tax exempt sales to such an entity.

This response is based on the facts provided as summarized above. Any change in facts or the introduction of new facts may lead to a different result.

The *Code of Virginia* sections, regulation and public documents cited are available on-line at www.tax.virginia.gov in the Laws, Rules and Decisions section of the Department's web site. If you have any questions about this ruling, you may contact ***** the Department's Office of Tax Policy, Appeals and Rulings, at *****.

Sincerely,

Craig M. Burns
Tax Commissioner

AR/1-5139575004.T
