North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

October 20, 2020

[redacted]

Re: Private Letter Ruling Request
[redacted]
Account ID: [redacted]
FEIN: [redacted]

Dear [redacted]:

The Department has completed its review of your request for a written determination on behalf of your client, [redacted], ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your initial request as well as any supplemental information provided to the Department for consideration.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the tax law to a specific set of existing facts furnished by you on behalf of Taxpayer. This written determination is applicable only to Taxpayer as addressed herein and has no precedential value except to Taxpayer.

Overview and Relevant Facts

You state Taxpayer purchases the [redacted] product ("Product") from [redacted]. [redacted]

Product is "a coronary stent that inhibits restenosis (the abnormal narrowing of an artery) and thereby prevents or corrects a physical malfunction and supports a patient's weakened coronary arteries." The drug inside the tubular mesh structure "is slowly released as the polymer degrades and is intended to inhibit restenosis by reducing vessel smooth muscle cell proliferation. [redacted] Disposable devices associated with implantation may be included."

In response to the Department's questions, you provided a description of the Product. You stated that the "[redacted] is a metal stent with a special drug coating added to help reduce the chance of the artery becoming blocked again. The drug is released from the stent over the period of time during which re-blockage is most likely to occur. The stent was designed to be very flexible, allowing it to fit the shape of [the] artery. [redacted]

Issue

Is the Product purchased by Taxpayer classified as a prosthetic device and, therefore, specifically exempted from North Carolina sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(12)a.?

Applicable Statutes and References

Under Article 5 ("Article") of the North Carolina Revenue Act ("Act")[1], N.C. Gen. Stat. § 105-164.1 *et. seq*., Subchapter VIII: Local Government Sales and Use Tax, and Chapter 1096 of the 1967 Session Laws, State, local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer's net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the percentage rates listed in subdivision N.C. Gen. Stat. § 105-164.4(a) and the applicable local and applicable transit rates of sales and use tax. N.C. Gen. Stat. §§ 105-164.3(15), 105-164.3(65), 105-164.3(77), 105-164.3(123), 105-164.3(195), 105-164.3(223), 105-164.4, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.13(12)a. provides an exemption from sales and use tax, in part, for "[t]he sale at retail and the use, storage, or consumption in this State of . . . [p]rosthetic devices for human use."

N.C. Gen. Stat. § 105-164.3(159) defines the term "prosthetic device" as "[a] replacement, corrective, or supporting device worn on or in the body that meets one of the conditions [listed below]. The term includes repair and replacement parts for the device. The conditions are as follows:

a. Artificially replaces a missing portion of the body.
b. Prevents or corrects a physical deformity or malfunction.
c. Supports a weak or deformed portion of the body."

Sales and Use Tax Bulletin 47-1B provides a list of items that qualify as prosthetic devices. Stents implanted in the body are included in this list.

The Streamlined Sales and Use Tax Agreement ("SSUTA"), Health Care Item List – Appendix L[2],, provides, in part, that "Stents" are used to "[m]aintain the natural opening in the body. . . ." and are classified as ""Prosthetic device."

1 References to the Act and North Carolina General Statutes are based on the laws in effect as of the date of issuance of this private letter ruling except as otherwise noted herein.
2 North Carolina is a member state of the SSUTA, a multistate effort to simplify and modernize sales and use tax administration. The Health Care Item List is available on the Streamlined Sales Tax website at: https://www.streamlinedsalestax.org/.

Ruling

Based on the information furnished, the Product purchased by Taxpayer is a coronary artery stent that contains a drug that is released into the coronary artery. The Product meets the definition of the term "prosthetic device" as provided in N.C. Gen. Stat. § 105-164.3(159) by providing support to a weak or deformed portion of the body and by preventing or correcting a physical malfunction by keeping the coronary artery from narrowing so that the blood can flow properly throughout the body. Taxpayer's purchases of the Product are specifically exempted from North Carolina sales and use tax under the provisions of N.C. Gen. Stat. § 105-164.13(12)a.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. 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 aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Issued on behalf of the Secretary of Revenue
By the Sales and Use Tax Division