



## North Carolina Department of Revenue

Roy Cooper  
Governor

Ronald G. Penny  
Secretary

October 20, 2020

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Private Letter Ruling

Taxpayer: [REDACTED]

Account: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a written determination on behalf of [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 subsequent the original request.

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 Taxpayer and Taxpayer's representative on behalf of Taxpayer. This written determination is applicable only Taxpayer and as such has no precedential value except to Taxpayer.

### **Overview and Relevant Facts**

[REDACTED] ("the Offering") [REDACTED] is a prescription use device that consists of a housing and implant. The Offering is designed to increase prostatic urethral patency by providing prostate lobe tissue retraction while preserving the potential for future prostate procedures and is intended for the treatment of symptoms due to urinary outflow obstruction secondary to benign prostatic hyperplasia in men.

Each [REDACTED] implant is sold to a hospital or a medical facility in its own sterile, individual housing that is designed to couple to a urethroscope. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] The housing "is single use; it is not reloadable or reusable."<sup>1</sup>

<sup>1</sup> Additional information on the use of the Offering titled "[The Offering] Instructions for Use" was accessed on July 31, 2019 from [REDACTED]  
[REDACTED]

October 20, 2020  
Page 2

“The implant and its housing are sold together as an indivisible unit. The urethroscope is sold separately and is not included in [the Offering]. The Food & Drug Administration cleared the implant and housing to be used together as an indivisible unit. [REDACTED]

[REDACTED] Finally, health care providers have been reimbursed by CMS for the use of the [Offering] under the CMS Healthcare Common Procedure Coding System Product Code [REDACTED] which has the description [REDACTED]. These reimbursements under the prosthesis description were applied to the implant and housing as an indivisible unit.”

### Issue

Does the Offering meet the definition of the term “prosthetic device” pursuant to N.C. Gen. Stat. § 105-164.3(30b), as such, does the Offering qualify for an exemption for a “prosthetic device” for human use 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”)<sup>2</sup>, 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(23), 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. § 105-164.3(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 of this subdivision. 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.”

N.C. Gen. Stat. § 105-164.13(12)a. provides for an exemption for the sale at retail and the use, storage, or consumption in this State of “prosthetic devices for human use” from the tax imposed by the Article.

<sup>2</sup> 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.

██████████  
October 20, 2020  
Page 3

**Ruling**

The Offering meets the definition of the term prosthetic device as described in N.C. Gen. Stat. § 105-164.3(159). ██████████

██████████ ██████████  
██████████  
██████████  
██████████  
██████████

██████████ Therefore, the Offering qualifies for the exemption for a “prosthetic device” for human use as provided in 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 letter 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 letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling 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