North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

March 29, 2021

[redacted]

Re: Private Letter Ruling Request
[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 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 and has no precedential value except to Taxpayer.

Overview and Relevant Facts

You state that the Taxpayer is "a retailer of prescription therapeutic footwear that [is] sometimes referred to as diabetic shoes. The primary goal of therapeutic footwear is to prevent physical malfunctions, which can include strain, ulcers, calluses, or even amputations for patients with diabetes and poor circulation. These shoes are specially designed with features intended to prevent skin breakdown in diabetics with pre-existing foot disease. The shoes are equipped with a removable support insert custom made for the patient. The therapeutic footwear and custom-made support inserts work together as a preventive system to help diabetics prevent foot injuries and improve mobility. Therapeutic footwear cannot be worn without inserts and the inserts cannot be used in non-therapeutic shoes. In addition to meeting strict guidelines, diabetic shoes must be prescribed by a physician and fit by a certified individual, such as an orthotist, podiatrist, therapeutic shoe fitter, or pedorthist."

In response to the Department's questions, you stated, "[s]hoes are manufactured with an extra [redacted] depth to accommodate custom inserts" and Taxpayer provides "the shoe fitters.... there is no charge for this service." Taxpayer does "not invoice the customer, [Taxpayer] bill[s] their insurance company (Medicare or private insurance). A statement is sent to the customer

reflecting payments made by their insurance company and any applicable copayments related to their insurance coverage." Customers cannot purchase the shoes from their physician. They can only purchase the shoes "through third parties." As for the period of time Taxpayer has sold these shoes in North Carolina, you advised that Taxpayer has "not serviced any customers located in North Carolina."

Issue

Is the therapeutic footwear sold 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 Chapter 105 of the North Carolina General Statutes, Article 5 ("Article") of the North Carolina Revenue Act ("Act") , N.C. Gen. Stat. § 105-164.1 et. seq.; Subchapter VIII, Local Government Sales and Use Tax, N.C. Gen. Stat. § 105-463 et. seq.; and Chapter 1096 of the 1967 Session Laws; State, applicable 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 applicable State, applicable local, and applicable transit rates of sales and use tax. N.C. Gen. Stat. §§ 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(191) 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 sales of an exemption from sales and use tax for sales of "[p]rosthetic devices for human use."

Ruling

Based on the information provided, the therapeutic footwear sold by Taxpayer provides support to its customers' feet and aids in the prevention of ulcers, calluses, and other complications to the feet that are a result of diabetes. Since the therapeutic footwear serves as a supporting device that customers wear on their bodies to prevent or correct a deformity or malfunction of the feet as a result of diabetes, the footwear meets the definition of prosthetic device as defined in N.C. Gen. Stat. § 105-164.3(191). Sales of the therapeutic footwear qualify for an exemption from sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(12)(a) provided the therapeutic shoes are for human use.

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 Taxpayer may not rely on it. If Taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of Taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford 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