



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

July 28, 2022

[REDACTED]
[REDACTED]
[REDACTED]
[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 supplemental information provided to the Department.

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 as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You state that the Taxpayer's "anesthesia machine [the device] [is] manufactured [REDACTED] [Taxpayer] suppl[ies] a device/durable good for all in the medical profession including healthcare/hospitals & dental offices. . . . [REDACTED]

[REDACTED] This device can be used by licensed medical professionals to administer to patients within their offices. . . ."

In response to the Department's questions, you state that "[s]ales are to dentists, dermatologists and hospitals. There are no sales to patients."

Issue

Do the Taxpayer's sales of the anesthesia machines qualify for exemption from North Carolina sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(12)c as durable medical equipment?

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Applicable Statutes and References

North Carolina imposes State, local, and transit rates of sales and use tax on a retailer engaged in business in the State based on the retailer's net taxable sales of, or gross receipts derived from, tangible personal property, certain digital property, and taxable services. N.C. Gen. Stat. §§ 105-164.4, 105-164.6, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, 105-537 and Chapter 1096 of the 1967 Session Laws.

N.C. Gen. Stat. § 105-164.3(71) defines "durable medical equipment" as "[e]quipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include mobility enhancing equipment.

- a. Can withstand repeated use.
- b. Primarily and customarily used to serve a medical purpose.
- c. Generally not useful to a person in the absence of an illness or injury.
- d. Not worn in or on the body."

N.C. Gen. Stat. § 105-164.13(12)c. provides an exemption from sales and use tax for sales of "[d]urable medical equipment sold on prescription."

North Carolina Sales and Use Tax Bulletin 40-1B.3 includes "anesthesia machines" in the list of items that are "considered to be durable medical equipment and are exempt from sales and use tax when sold on prescription."

North Carolina Sales and Use Tax Bulletin 38-2 provides, in part, "[s]ome instruments and equipment purchased by dentists and orthodontists for use in rendering professional services may be classified as durable medical equipment; however, since these items are not acquired by the dentists and orthodontists pursuant to a prescription, the purchases are subject to the general State, applicable local, and applicable transit rates of sales and use tax."

North Carolina Sales and Use Tax Bulletin 44-1 states "[s]ales to physicians, dentists, hospitals, or similar users or consumers of medical supplies, medical instruments, medical equipment, and laboratory equipment used to diagnose, prevent, treat, or cure disease are subject to the general State, applicable local, and applicable transit rates of sales and use tax."

Ruling

Based on the information provided, the Taxpayer's sales of the anesthesia machines¹ do not qualify for an exemption from sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(12)c. Although the anesthesia machines are durable medical equipment, they are sold by Taxpayer to dentists, dermatologists, and hospitals for use by these professionals in their businesses. These sales are not sales on prescription as required by N.C. Gen. Stat. § 105-164.13(12)c. Therefore, Taxpayer's sales of the anesthesia machines are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

¹ [REDACTED]
[REDACTED]
[REDACTED]

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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 the 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