

REQUEST LETTER

04-023
NAME
ADDRESS

Re: Taxability of Wraparound Solutions

COMPANY is now offering Wraparound “Solutions” for medical device training, support and management of the product. We are in the business of manufacturing, wholesale, retail and service of Automated External Defibrillators (AED). The new “solution” products are services that help our customer better manage the device, training and maintenance that will be needed as, and when the device is used.

The following information details the services that are included in the Wraparound Solutions. We would like to find out what is the taxability of these solutions when they are billed as:

1. Bundling all services below together on one line item.
2. Individually billing each service listed below.
3. All services included with the AED.

Wrap Around Solutions-Services

“Wraparounds” are offered in multi-year terms. The wraparounds include the following components:

- Basic Medical Direction – This service includes the prescription for the AED, ongoing medical oversight of the AED program by a state-licensed board-certified physician, protocols for use of the AED, post-event clinical review by physician and an AED clinical help-line that is available M-F 9-5.
- Training – AED/CPR training for 5 individuals through its Educredit system using its nation-wide training network. The Educredit is a training voucher redeemable for training 1 student in AED/CPR training, and is valid for 1 year. Training consists of a 4-hour course and is usually provided shortly after the purchase date, and refresher training for 5 individuals is included with the 3 and 5 year programs on a biennial basis.
- Automatic Supply Replenishment for CR+ - automatic replenishment of electrodes/batteries upon use of the device or upon expiration of the supplies.
- Online Program Management – tracks the details of the AED program, including trained responders and their training expiration dates, location of devices, and expiration dates of supplies. All of this information is available to the customer via a web portal.
- State registration services – complete any state registration filing needed for the AED program and also pays registration fee if necessary.
- Post-event download services – Upon use of the AED, a technician will come to the site to download the event data from the AED.

- Post-event rescuer support – Upon use of the AED, a counselor will come to the site to provide counseling services to the company and help people cope with a potentially stressful event.
- AED clinical related helpline 24 hr – Expands the helpline offered in the basic medical direction 24/7 coverage from M-F 9-5.

All of the components outlined above, with the exception of training, are generally provided on a constant, continual basis throughout the service term. Training, however, is provided at specific points in time during the service term and is not continuous. Generally, customers typically will get trained within the first two months of the AED program, although they technically have the ability to get trained anytime within the first year of the service term as the Educredits are valid for 1 year.

If you could please send a letter of ruling regarding the taxability of our Wraparound Solution it would be very helpful. We would like to know if this would be taxable or exempt as a service, training or other.

Sincerely

NAME
TITLE

RESPONSE LETTER

December 4, 2006

NAME
ADDRESS

Re: Private Letter Ruling 04-023 - Sales and use tax on services to support medical equipment

Dear NAME,

This letter is in response to your request for tax guidance. The Commission apologizes that personnel changes at the Commission have delayed the issuance of this letter. This letter ruling is not intended as a statement of broad Tax Commission policy. It is an interpretation and application of the tax law as it relates to the facts presented in your request letter and the assumptions stated in the Analysis portion of this ruling letter. If the facts or assumptions are not correctly described in this letter ruling, please let me know so we can assure a more accurate response to your circumstances.

Facts

COMPANY manufactures, sells and services Automated External Defibrillators (“AED”). The company also sells training and support services related to the sale of the device.

The services offered, which the company calls “wraparounds,” are as follows:

1. Basic Medical Direction: This service includes the prescription for the AED, ongoing medical oversight by a physician, protocols for use of the device, post-event clinical review by a physician and support from a clinical help line during business hours.

2. Training: Training is provided for CPR and use of the AED device, plus refresher training for a 3-or 5-year period.
3. Automatic Supply Replenishment: Electrodes and batteries after use of the device or upon their expiration.
4. Online Program Management: Management system tracks training records, expiration dates, and device locations.
5. State Registration Services: Completes and files any registration required by the state and pays any registration fee.
6. Post-event Download Service: After use of the device, a technician goes to the site and downloads data from the device.
7. Post-event Rescue Support: After use of the device, a counselor goes to the site to provide counseling services.
8. Expanded Help Line Service: Expands the availability of the help line service to 24/7 coverage.

You ask if charges for these items are subject to Utah sales and use tax if:

- a. the services are bundled in a single line item;
- b. the various services are billed individually; or
- c. all services are included with the sale of the AED.

Pertinent Utah Law

Effective July 1, 2005, ¹ Utah law provides a sale tax exemption for sale of certain durable medical equipment. Under Utah Code Section 59-12-102 (27), durable medical equipment is defined as medical equipment that:

- (1) can withstand repeated use;
- (2) primarily and customarily serves a medical purpose;
- (3) generally is not useful in the absence of illness or injury; and
- (4) is not worn in or on the body.

Durable medical equipment includes repair and replacement parts.

Under Utah Code Section 59-12-104 (36), the exemption applies only to sales of durable equipment if it is purchased with a prescription and used for home use only.

Utah Code Section 59-12-102 (66) defines “purchase price” to include “a charge by the seller for any service necessary to complete the sale.”

Analysis

¹ Prior to July 1, 2005, Utah law allowed for an exemption for home medical equipment only if the purchase of the equipment was eligible for payment under Medicare or Medicaid.

Section 59-12-104 (36) of the Utah Code contemplates an exemption for sales of durable medical equipment for home use. You state that you sell AED equipment at wholesale and retail. Wholesale transactions are, of course, exempt under Utah's resale provisions if an exemption certificate is obtained from the purchaser. An entity may also be eligible to purchase the AED equipment tax-free under another exemption, such as the government or charitable or religious organization exemptions, upon providing an exemption certificate. However, retail sales are exempt under Section 104(36) only if the equipment is purchased by prescription for home use. Because your services include counseling "to the company" that uses the AED, training for five individuals, and maintenance of training records, we presume that at least some of your retail sales are for other than home use.

Charges bundled with the sale of the AED

If the sales of taxable and non-taxable items are bundled together in a single charge or purchase price, the entire amount is subject to tax. Therefore, if your company makes a taxable sale of an AED device and includes charges for various services in the sales price, the entire amount is taxable.

If your company sells an AED by prescription for home use, the equipment and its accessories are exempt from sales tax. However, if the sale of the AED for home use is bundled with any other taxable charges, the entire sale is taxable.

Application of sales tax to unbundled charges for services

Charges for services are generally not subject to Utah sales tax unless otherwise expressly provided in the Tax Code. The Tax Code expressly provides that "a charge by the seller for any service necessary to complete the sale" is part of the purchase price of the item sold. Therefore, when your company makes a taxable sale of an AED device, charges for any services that are necessary to complete the sale are also taxable, even if separately identified on the sales invoice or receipt. In determining whether the service component of a "mixed transaction" is taxable, the Commission considers the connection between the item of tangible personal property sold and the service component. For instance, if the provision of training is necessary to sale of an AED, charges for the training is considered part of the purchase price of the AED.

In making a determination on this issue, consider whether any or all of the services described are required for the proper use and maintenance of the AED. If a buyer cannot purchase the AED without also purchasing the related services, the services are considered to be necessary to complete the sale of the AED.

If wraparound packages are optional and not necessary to complete the sale of the AED, the taxability of each component is considered on its own merits (even though the wraparound packages may only be available to a customer who purchases an AED).

Basic Medical Direction - Medical oversight or supervision provided by a physician is not taxable. Be aware that the delivery of training materials or protocols may be taxable, rendering the entire transaction taxable.

Training - Charges for classroom instruction are generally not taxable. However, the sale of instructional courses via compact disc or other recorded media is considered a taxable sale of tangible personal property.

Automatic Supply Replenishment - If the sale of the AED qualifies for exemption, the sale of its repair and replacement parts also qualify for exemption. For purposes of this ruling, we assume

that the batteries replaced under this package are specialized batteries that are unique to the AED and must be obtained from your company or another similar provider. Otherwise, our answer might be different.

If the sale of the AED does not qualify for exemption, sales of repair and replacement parts are taxable.

Online Program Management - This service is not taxable.

State Registration Services - This service is not taxable.

Post-event Download Service - This service is not taxable.

Post-event Rescuer Counseling - This service is not taxable.

AED Clinical Help Line - This service is not taxable.

Ruling

The determination of whether the sale of an AED device is subject to sales or use tax under Section 104(36) depends on whether it is purchased by prescription for home use. Sales of AED devices for other than home use are taxable, unless some other exemption applies. If the sale of the device is taxable, the sale of replacement parts and supplies are also taxable.

The determination of whether the various services offered are taxable depends on whether the sale of the services is necessary to complete the sale of the AED device. If a service is necessary to complete the sale, the charge for the service is considered part of the purchase price of the AED, even if separately stated on the billing invoice or receipt.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/IR
04-023