
REQUEST LETTER

05-004

NAME
ADDRESS

Dear TP REPRESENTATIVE,

The COMPANY, a retail drugstore chain requests a written opinion regarding the sales taxability on the following medical equipment:

-EQUIPMENT- This is a battery operated external defibrillator used in cardiac emergencies to correct abnormalities in the heart's electrical system. Would this product be subject to a sales tax regardless of whether or not purchased with a written prescription?

The recent changes with the SSTP definitions in some states have made us ask about the sales taxability on this product. Enclosed you will find more information regarding the EQUIPMENT.

Thank you for your assistance in this matter.

Sincerely,

NAME
ADDRESS
PHONE
FAX

RESPONSE LETTER

NAME
ADDRESS

RE: Private Letter Ruling Request –

Dear NAME,

You have asked the Commission for a private letter ruling regarding the taxability of your EQUIPMENT, a battery operated external defibrillator used in cardiac emergencies to restore normal sinus rhythm. You ask if a retail sale of the device is subject to sales or use tax following the adoption of the Streamlined Sales Tax Project (SSTP). Before discussing the current applicable statutes as of July 1, 2005, we will mention those that were in effect between July 1 and the date of your letter.

“Durable medical equipment,” as previously defined in Utah Code Ann. §59-12-102(23), is exempt from taxation. Under that version of the statute, to qualify as “durable medical equipment,” the products were required to be eligible for payment under Title XVIII of the federal Social Security Act or the state plan for medical assistance under Title XIX of the federal Social Security Act. Based on information from the Division of Health Care Financing at the Utah State Department of Health, we have concluded that defibrillators are not eligible for payment under either of the titles described above. Therefore, defibrillators did not meet the previous definition of durable medical equipment, effective through June 30, 2005.

You also asked if an exemption would apply if the device were prescribed. Section 59-12-104 (38) exempts the sales or rentals of durable medical equipment if a person presents a prescription for it. As defibrillators did not meet the previous definition of durable medical equipment, purchases made prior to July 1, 2005 would be subject to sales or use tax, regardless of whether purchased pursuant to a prescription as previously defined in §59-12-102 (46).

Effective July 1, 2005, 59-12-102 (25), as amended under S.B. 127, no longer includes eligibility for payment under Title XVIII of the federal Social Security Act or the state plan for medical assistance under Title XIX of the federal Social Security Act. Thus, defibrillators meet the new definition of durable medical equipment, effective July 1, 2005. They can withstand repeated use, are primarily and customarily used for a medical purpose, are generally not useful to a person in the absence of illness or injury, and are not worn in or on the body. However, the change in the definition does not make all sales exempt from sales tax.

Effective July 1, 2005, §59-12-104 (38) exempts from sales tax durable medical equipment that is 1), rented or purchased pursuant to a prescription, and 2), used for home use only. Any rental or purchase not meeting both prongs of the test would not be exempt.

In conclusion, prior to July 1, 2005, the rental or sale of the EQUIPMENT, whether with or without a prescription, was subject to sales or use tax. Effective July 1, 2005, rentals or purchases made pursuant to a prescription for home use only are exempt. All other rentals or purchases remain subject to sales tax.

Our analysis is based on the assumption that the facts as you have represented them are correct. Should the conditions or circumstances be other than as you have represented, our conclusions may differ. Should you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/SR
05-004