

05-014

Follow Up Letter

May 15, 2006

NAME
ADDRESS

Re: **Request for Clarification of Response to Private letter Ruling Regarding the Prosthetic Device Exemption.**

Dear NAME,

As a follow-up to our recent telephone conversation regarding the Utah State Tax Commission's ("the Commission") interpretation of certain statutory provisions regarding the exemption for sales of prosthetic devices on or after July 1, 2005, CORP respectfully requests clarification of the Commission's response issued on April 28, 2006, a copy of which is attached for reference purposes.

In our original request, we provided certain facts that are recounted in the Commission's response. Specifically, we stated that certain items purchased by CORP'S hospitals would appear to meet the statutory definition of a prosthetic device as set forth in Utah Code Ann §59-12-102(59). Examples of these devices include implantable cardio-defibrillators ("ICD"), pacemakers, orthopedic and spinal implants, intraocular lenses, stents, surgical mesh, artificial hearts valves, vascular grafts and artificial limbs. Further, we stated that these devices are regulated by the U.S. Food and Drug Administration and are required to bear a Federal Legend, which states the following: "CAUTION: Federal law prohibits dispensing without prescription" or "Rx only."

The Commission states in its original findings that "prosthetic devices ... intended for human use, purchased by a hospital or medical facility following issuance of a prescription, and provided to a patient pursuant to a prescription, will be exempt from sales tax." Additionally, the response states that "[t]he Commission interprets presentation of a prescription broadly. As long as the hospital provides a prescription to a supplier, this requirement is satisfied."

As we discussed, under prevailing business practices, a hospital would not submit a prescription to vendors of prosthetic devices. One of the key reasons for this is compliance with federal provisions regarding the nondisclosure of individually identifiable health information contained in the Health Insurance portability and Accounting Act of 1996 ("HIPAA"). Also, the vendor would not require a prescription,

since it has met its legal obligations regarding issuance of advice on the use of the prosthetic device by including the Federal Legend as part of the device's packaging.

In consideration of the above, CORP proposes to the Commission that if a device otherwise meets the definition of a prosthetic device as provided in Utah Code Ann. §59-12-104(59) and bears a federal legend, the purchase of such device by a hospital will be considered exempt under Utah sales and use tax law. CORP believes this result is consistent with the Commission's intent to exempt the purchase of prosthetic devices by hospitals and affords the Commission's intent to exempt the purchase of prosthetic devices by hospitals and affords the Commission an objective, verifiable standard to ensure compliance with the prescription requirement provided in §59-12-104(59).

We would be happy to discuss this issue further with the Commission and welcome your response to this request.

Should you have any questions or require additional information, please feel free to contact me at PHONE. Thank you again for your assistance.

Sincerely,

NAME
ADDRESS

RESPONSE LETTER

November 21, 2006

NAME
ADDRESS

Re: Request for clarification of Private Letter Ruling 05-014

Dear NAME:

During discussions following your request for clarification, you represented that the hospital or medical facility will hold the prosthetic devices on consignment until a prescription for the item has been issued. At that point the hospital or medical facility purchases the prosthetic device. We have considered this arrangement in light of our statute.

Section 59-12-104 (55) requires that the prosthetic device be intended for human use and purchased by a hospital or medical facility following issuance of a prescription. When these requirements are met, the transaction is exempt from sales tax. Since, under the circumstances you have outlined, the purchase by the hospital occurs

after the issuance of the prescription, the requirements are met and the transaction would be exempt from sales tax.

This conclusion is based on the information provided to us. Our response might be different if the facts are other than those upon which our response is based. Should you have further questions, please contact us.

For the Commission,

Marc B. Johnson

Commissioner

MBJ/SR
05-014