

05-014

NAME  
ADDRESS

Request for Private Letter Ruling Regarding the Prosthetic Device Exemption

Dear TP REPRESENTATIVE

On behalf of our client, COMPANY, we respectfully request clarification of the Utah State Tax Commission's ("the Commission") interpretation of certain statutory provisions that became effective on July 1, 2005 with the passage of Senate Bill 127. This bill enacted certain key provisions of the Streamlined Sales and Use Tax Agreement ("SSUTA"), including the adoption of uniform definitions for medical terms such as "drug," "durable medical equipment" and "prosthetic device."

Our specific inquiry pertains to the taxability of prosthetic devices when purchased by for-profit hospital facilities and administered to patients undergoing various medical treatment procedures at the facilities.

## **FACTS**

COMPANY owns and operates several for-profit hospitals within the state of Utah. During the course of patients' treatment, attending physicians will prescribe certain prosthetic devices to be administered to the patients to alleviate various medical conditions. For example, patients suffering from irregular contractions of the heart (ventricular dysrhythmias) may be prescribed as implantable cardio-defibrillator ("ICD") to return the heart to a normal cardiac rhythm. A pacemaker may be prescribed to speed-up-the heartbeat of patients who have a heart rate under 60 beats per minute (severe symptomatic bradycardia). For those patients that suffer from severe joint ailments, including degenerative diseases such as chronic arthritis; it may be necessary to prescribe the replacement of a hip, knee or shoulder joint to alleviate the condition.

COMPANY purchases and furnishes to patients various prosthetic devices to replace or augment the function of internal body organs, such as pacemakers, ICD's, orthopedic and spinal implants, intraocular lenses, stents, surgical mesh and artificial heart valves and vascular grafts. Also, it purchases a variety of devices that are used to replace missing portions of patients' bodies, such as artificial limbs. All of the prosthetic devices purchased by COMPANY are administered to patients pursuant to a prescription issued by a licensed physician. Furthermore, such prosthetic devices are regulated as medical devices 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."

## **LAW AND ANALYSIS**

Effective July 1, 2005, the following statutory provisions were enacted as part of the SSUTA legislation:

Utah Code Ann. §59-12-104 provides an exemption for the following:

(59) sales of a prosthetic device:

- (a) for use on or in a human;
- (b) for which a prescription is issued; and
- (c) to a person that presents a prescription for the prosthetic device;

Utah Code Ann §59-12-102(59) defines the term “prosthetic device” as follows:

(a) “Prosthetic device” means a device that is worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct a physical deformity or physical malfunctioning; or
- (iii) support a weak or deformed portion of the body.

(b) “Prosthetic device” includes:

- (i) parts used in the repairs or renovation of a prosthetic device; or
- (ii) replacement parts of a prosthetic device.

(c) “Prosthetic device” does not include:

- (i) corrective eyeglasses;
- (ii) contact lenses;
- (iii) hearing aids; or
- (iv) dental prostheses.

In reviewing the above statutory provisions, it would appear that the exemption criteria set forth in Utah Code Ann. §59-12-104(59) are met with respect to the purchases of prosthetic devices by a for-profit hospital. Addressing criterion (a), each of the items is intended for use on a human. With respect to criterion (b), in all cases patient-specific prescriptions are issued for the items. For criterion (c), the vast majority, if not all of the prosthetic devices that would fall under the scope of the term, as defined in Utah Code Ann. §59-12-102(59), require significant intervention of a licensed medical professional to either physically implant or attach the device to the patient, or fit it to the patient so that it functions properly. Accordingly, it would appear that reference in criterion (c) to “a person that presents a prescription for the prosthetic device” would also extend to hospitals and similar medical facilities. If not, the prosthetic device exemption would be restricted to those rare circumstances whereby an individual in need of such a device purchased it directly from a supplier, which is an impractical or impossible scenario for a

majority of the devices at issue, especially those that require physical implantation into the patient.

**REQUEST FOR RULING**

COMPANY respectfully requests clarification of the Commission's interpretation of the newly enacted statutory provision exempting the sales of a "prosthetic device." COMPANY believes that its purchases of prosthetic devices meet the statutory requirements for exemption under Utah Code Ann. §59-12-104(59) for the reasons outlined above.

Should you have any questions or require additional information, please feel free to contact me at PHONE NUMBER. Thank you for your prompt consideration of this matter.

Sincerely,

NAME  
COMPANY

Bcc: SECOND NAME

April 28, 2006

NAME  
ADDRESS

Re: Private Letter Ruling Request - Prosthetic Device Sales Tax Exemption

Dear NAME:

You requested clarification of the Commission's interpretation of laws regarding a sales tax exemption for prosthetic devices. You state that attending physicians will prescribe certain prosthetic devices to be administered to patients to alleviate various medical conditions. Examples include implanted defibrillators, pacemakers, and various joint replacements such as hips, shoulders and knees. You also state that COMPANY purchases and furnishes various prosthetic devices to patients pursuant to a prescription issued by a licensed physician. Finally, you represent that these items are regulated by the US Food and Drug Administration and are required to bear the statement "CAUTION: Federal law prohibits dispensing without prescription" or "Rx only."

Utah Code Ann. §59-12-104 (59) provides an exemption for, "sales of a prosthetic device: (a) for use in a human; (b) for which a prescription is issued; and, (c) to a person that presents a prescription for the prosthetic device; . . ."

Utah Code Ann §59-12-102(59) defines the term "prosthetic device" as follows:

(a) "Prosthetic device" means a device that is worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct a physical deformity or physical malfunctioning; or
- (iii) support a weak or deformed portion of the body.

(b) "Prosthetic device" includes:

- (i) parts used in the repairs or renovation of a prosthetic device; or
- (ii) replacement parts of a prosthetic device.

(c) "Prosthetic device" does not include:

- (i) corrective eyeglasses;
- (ii) contact lenses;
- (iii) hearing aids; or
- (iv) dental prostheses.

The Commission interprets the statutes to mean that prosthetic devices, as defined in 59-12-102 (59), 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.

The Commission interprets presentation of a prescription broadly. As long as the hospital provides a prescription to the supplier, this requirement is satisfied. The intended recipient of the prosthetic device need not personally present a copy of the prescription to the hospital. A physician's written order, whether in a chart note or some other writing, is sufficient.

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

---