

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 08-06**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the Tennessee sales and use tax to the sale of Kirschner Wires as medical implants.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[TAXPAYER] is a company that manufactures and sells medical implants and medical instruments primarily to hospitals, surgical centers and veterinarians. One of the products the Taxpayer sells is Kirschner Wires (“K-Wires”), which are wires typically implanted in patients temporarily in small fracture cases. The K-Wires are sold individually as well as with other related items, such as holding devices, external fixators, and implant modules.

K-Wires are implanted in a patient on a temporary basis in 50 percent of small fracture cases, with the wire protruding through the skin for future extraction. The wire protrudes through the skin because the K-Wires will migrate in the body, which occurs because K-Wires do not have screw threads cut into them. After a short period, the wires are removed. K-Wires are seldom kept in the body on a permanent basis. In large fracture cases, K-Wires are rarely implanted in a patient, even on a temporary basis, because of the migration issues and the strength of the wire. Based on materials provided by the Taxpayer, the K-Wires are medical corrective devices for use in small fracture cases to achieve internal traction and immobilization of bone fractures.

QUESTION

Is the sale of K-Wires exempt for Tennessee sales and use tax purposes?

RULING

Yes, provided that as of January 1, 2008, the K-Wires are sold for human use.

ANALYSIS

Under the Retailers' Sales Tax Act, Tenn. Code Ann. § 67-6-101 *et seq.*, the sale of tangible personal property, which includes K-Wires, is generally subject to sales and use tax. An item of tangible personal property is exempt for purposes of the Tennessee sales and use tax only if the item is specifically included within the scope of a statutory exemption. The Retailers' Sales Tax Act has been amended by 2007 Tenn. Pub. Acts, Chapter 602, effective January 1, 2008. Accordingly, the exemption provisions applicable to the sale of K-Wires change as of January 1, 2008. The analysis provided below for the sale of K-Wires is divided into two sections, the first discussing the Tennessee sales and use tax laws in effect through December 31, 2007, and the second explaining the exemption provisions applicable as of January 1, 2008.

In addition, the Taxpayer indicated that the K-Wires are sold individually as well as in conjunction with other related items.¹ However, pursuant to the Taxpayer's ruling request, the scope of this letter ruling is limited only to the sale of K-Wires individually for sales and use tax purposes.

1. The Sales and Use Tax Laws in effect through December 31, 2007

The sale of K-Wires is exempt from the Tennessee sales and use tax as orthotics through December 31, 2007.

¹ Note that when several items are sold together, but each item is itemized and priced separately, the taxability of each item is determined independently of the other items. Accordingly, if the sale of K-Wires individually is exempt from the sales and use tax, then the sale of K-Wires included with other items is also exempt, provided that the K-Wires are itemized and priced separately. However, if the K-Wires are sold in conjunction with other items where each item is not itemized and priced separately, and group of items includes taxable items, then every item, including the K-Wires, is subject to the sales and use tax.

Tenn. Code Ann. § 67-6-314(5) (2006) provides an exemption from the sales and use tax for the sale of “orthotics... and other similarly medical corrective or support appliances and devices.” “Orthotics” is generally defined as “a branch of mechanical and medical science that deals with the support and bracing of weak or ineffective joints or muscles.” MERRIAM-WEBSTER MEDICAL DICTIONARY. The exemption for orthotics includes devices used to brace, support or align the skeletal or muscular system. The Taxpayer sells K-Wires as medical corrective devices for use in small fracture cases to achieve internal traction or immobilization of bone fractures. “Traction” is generally defined as “a pulling force exerted on a skeletal structure (as in a fracture) by means of a special device or apparatus.” MERRIAM-WEBSTER MEDICAL DICTIONARY. The purpose of the K-Wires is to support or align the skeletal system, which falls within the exemption for orthotics. Accordingly, through December 31, 2007, the sale of K-Wires is exempt from the sales and use tax as orthotics.

2. *The Sales and Use Tax Laws as of January 1, 2008*

Effective January 1, 2008, the sale of K-Wires is exempt from the sales and use tax as prosthetics, provided that the K-Wires are sold for human use.

Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) provides an exemption from the sales and use tax for prosthetic devices for human use. Tenn. Code Ann. § 67-6-102(62) (Supp. 2007) defines the term “prosthetic device” in part as “a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body,” which is used to “correct a physical deformity or malfunction” or to “support a weak or deformed portion of the body.” In other words, to qualify for an exemption from the sales and use tax as a prosthetic device, an item must be: (1) a replacement, corrective or supportive device; (2) worn in or on the body; (3) used to correct a deformity or malfunction or to support a weak or deformed part of the body; and (4) sold for human use.

In this case, the Taxpayer sells K-Wires, which are implanted temporarily in a patient in small fracture cases. The K-Wires act as a corrective device worn in the body to correct the skeletal system after a small bone fracture, thus satisfying the first three requirements. In addition, K-Wires perform a similar function as “traction devices” worn on the body to correct large fracture cases, and the exemption for prosthetic devices includes such traction devices worn on the body. Accordingly, the sale of K-Wires is exempt from the sales and tax laws as prosthetic devices, provided that the K-Wires meet the fourth requirement and are sold for human use.²

CONCLUSION

Until January 1, 2008, the sale of K-Wires is exempt from the sales and use tax as orthotics under Tenn. Code Ann. § 67-6-314(5) (2006) because the K-Wires are used to support or align the skeletal system. Furthermore, as of January 1, 2008, the sale of K-Wires is exempt from the sales and use tax as prosthetic devices under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007),

² Note that because the exemption for prosthetic devices under Tenn. Code Ann. § 67-6-314(1) (2007) requires the devices to be sold “for human use,” the sale of K-Wires to veterinarians for animal use is not included within the exemption, and thus, is taxable for sales and use tax purposes.

provided they are sold for human use, because the K-Wires are corrective devices worn in the body used to correct a bone fracture.

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Commissioner of Revenue

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