

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 08-15**

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 rental and sale of various items of medical equipment and supplies.

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 Tennessee limited liability company set up to rent and sell various items of medical equipment and supplies. All of the Taxpayer's customers are patients with a prescription for the equipment and supplies rented and sold. The Taxpayer bills private insurance, Medicare or TennCare for payment of the equipment and supplies for the majority of

its business; however, for the one percent (1%) of the Taxpayer's business where the customer has no insurance or the items rented and sold are not payable by insurance, the customer pays cash for the equipment and supplies.

Provided by the Taxpayer is a list of various items of equipment, associated parts and supplies. The items of tangible personal property are as follows:

1. Diabetic Meters, Lancets, Lancet Devices, Diabetic Strips, and Control Solution
2. Diabetic Shoes and Shoe Inserts
3. Power Wheelchairs- Batteries (Gel), Casters, Fork Assembly, and Parts
4. Manual Wheelchairs, Crutches, Canes, Walkers, Rollators and Cam Walkers
5. Braces: Neck, Ankles and Knee
6. Lift Chairs and Lift Chair Mechanisms
7. Seat Assists, Gel Cushions for Seating, and Gel Overlays
8. Bedside Commodes
9. Raised Toilet Seats
10. Heat Therapy Pumps and Pump Replacement Pads
11. 4x4 Pads, 2x2 Pads, Surgical Tape, Gauze, Kerlex, Duoderm, and Conform
12. Tracheotomy Kits
13. Gladase C
14. TENS Units- Electrodes and Leads
15. Oxygen Concentrators- Tubing, Nasal Cannula, Filters, Tanks and Masks
16. CPAPs- Tubing, Filters and Masks
17. Bi-PAPs- Tubing, Filters and Masks
18. Nebulizer- Circuits and Filters
19. GeriChairs
20. Hospital Beds and Bed Mattresses
21. Alternating Pressure Mattresses and Low Air Loss Mattresses
22. Trapeze Bars

QUESTIONS

1. Are the medical equipment and supplies listed above exempt for purposes of the Tennessee sales and use tax laws, as amended by 2007 Tenn. Pub. Acts, Chapter 602, effective January 1, 2008?

2. With respect to the sales and use tax laws in effect as of January 1, 2008, is a prescription required for an exemption to apply?
3. Are the medical equipment and supplies listed above exempt for purposes of the Tennessee sales and use tax laws in effect through December 31, 2007?
4. Can the medical equipment and supplies be rented as well as sold, and still qualify for an exemption as determined under Questions 1 and 2?
5. Can the medical equipment and supplies be paid for by private insurance, Medicare, TennCare and/or with cash and still qualify for an exemption as determined under Questions 1 and 2?

RULING

The following table provides the answers to Questions 1 and 2:

	Items	Prescription Required as of 1/1/08?	Exempt as of 1/1/08?	☀Applicable Exemption
1.	Diabetic Meters, Lancets, Lancet Devices, Diabetic Strips, and Control Solution		No	None
2.	Diabetic Shoes and Shoe Inserts	No	Yes	Prosthetic
3.	Power Wheelchairs- Batteries (Gel), Casters, Fork Assembly, and Parts	Yes	Yes	MEE
4.	Manual Wheelchairs, Crutches, Canes, Walkers, Rollators and Cam Walkers	Yes	Yes	MEE
5.	+Braces: Neck, Ankles and Knee	No	Yes	Prosthetic
6.	Lift Chairs and Lift Chair Mechanisms	Yes	Yes	MEE
7.	^Seat Assists, Gel Cushions for Seating, and Gel Overlays		No	None
8.	Bedside Commodes	Yes	*Yes	DME
9.	Raised Toilet Seats	Yes	Yes	MEE
10.	Heat Therapy Pumps and Pump Replacement Pads		No	None
11.	Wound Care Supplies: 4x4 Pads, 2x2 Pads, Surgical Tape, Gauze, Kerlex, Duoderm, and Conform		No	None
12.	Tracheotomy Kits		No	None
13.	Wound Care Supply: Gladase C	Yes	Yes	Drug
14.	^TENS Units- Electrodes and Leads	No-worn	Yes	Prosthetic
		Yes-not worn	*Yes	DME

	Items	Prescription Required as of 1/1/08?	Exempt as of 1/1/08?	☼Applicable Exemption
15.	Oxygen Concentrators- Tubing, Nasal Cannula, Filters, Tanks and Masks	No	Yes	Oxygen
16.	CPAPs- Tubing, Filters and Masks	No-worn	Yes	Prosthetic
		Yes-not worn	*Yes	DME
17.	Bi-PAPs- Tubing, Filters and Masks	No-worn	Yes	Prosthetic
		Yes-not worn	*Yes	DME
18.	Nebulizer- Circuits and Filters		No	None
19.	GeriChairs	Yes	Yes	MEE
20.	Hospital Beds and Bed Mattresses	Yes	*Yes	DME
21.	Alternating Pressure Mattresses and Low Air Loss Mattresses	Yes	*Yes	DME
22.	Trapeze Bars	Yes	Yes	MEE
☼ MEE: "Mobility enhancing equipment" exempt under Tenn. Code Ann. § 67-6-314(6) (Supp. 2007) DME: "Durable medical equipment" exempt under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007) Prosthetic: "Prosthetic devices" exempt under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) Drug: "Drug" exempt under Tenn. Code Ann. § 67-6-320(a) (Supp. 2007) Oxygen: "Oxygen delivery equipment" exempt under Tenn. Code Ann. § 67-6-314(3) (Supp. 2007)				
+Note that braces are "prosthetics devices" that qualify for the exemption under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007); however, non-medicated ace bandages, elastic bandages and gauze wraps are not prosthetic devices and are taxable.				
*For items that are "durable medical equipment," to qualify for the exemption under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007), the item must be dispensed pursuant to a prescription and <i>for home use</i> .				
^ For these items, the exemption determination as of January 1, 2008, differs from the result through December 31, 2007.				

3. The items of medical equipment and supplies qualify for an exemption from the sales and use tax laws in effect through December 31, 2007, the same as provided in the table above for the sales and use tax laws effective January 1, 2008, with the following exceptions: (1) seat cushions, gel cushions for seating, and gel overlays are exempt only through December 31, 2007, and (2) TENS units, with its related electrodes and leads, are durable medical equipment and are exempt only as of January 1, 2008, when dispensed pursuant to a prescription and generally understood for use in the home.
4. Yes. The definition of a "sale" under Tenn. Code Ann. § 67-6-102(70)(A) (Supp. 2007) includes a "lease or rental;" therefore, the rental, versus a sale, of an item does not affect its taxability. If items of medical equipment and supplies otherwise qualify for a sales and use tax exemption, the items can be rented and still qualify.
5. Yes. If items of medical equipment and supplies qualify for a sales and use tax exemption as provided by the table above, the item qualifies for an exemption regardless whether the item is paid for by private insurance, Medicare, TennCare or with cash.

ANALYSIS

1. Exemptions/Prescriptions

Under the Retailers' Sales Tax Act, Tenn. Code Ann. § 67-6-101 *et seq.*, the sale of tangible personal property, which includes medical equipment and supplies, is generally subject to the 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 Taxpayer requested a ruling that includes the taxability of the items of medical equipment and supplies provided by the Taxpayer according to the sales and use tax laws in effect through December 31, 2007. However, the following analysis primarily is limited to treatment of the sales and use tax laws effective January 1, 2008, because of the limited applicability of the laws in effect through December 31, 2007. Accordingly, a detailed analysis is not provided for the 2007 determinations. While the exact basis for an exemption may differ, the result changes as of January 1, 2008, in only two instances, *i.e.* seat cushions, gel cushions for seating, and gel overlays and TENS units, with its related electrodes and leads, and additional analysis is provided in those cases.

Effective January 1, 2008, the following five exemptions are applicable to the list of medical equipment and supplies provided by the Taxpayer:

(1) Exemption for prosthetic devices for human use.

Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) provides an exemption from the sales and use tax for prosthetic devices. Tenn. Code Ann. § 67-6-102(62)(A) (Supp. 2007) defines the term "prosthetic device" as "a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body to: (i) Artificially replace a missing portion of the body; (ii) Prevent or correct physical deformity or malfunction; or (iii) Support a weak or deformed portion of the body[.]" Note that Tenn. Code Ann. § 67-6-102(62)(B) (Supp. 2007) specifically excludes corrective eyeglasses and contact lenses from the definition of "prosthetic device." No prescription is required for a prosthetic device to qualify for the exemption; however, Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) limits the exemption by requiring items to be "for human use."

(2) Exemption for durable medical equipment for home use with a prescription.

Tenn. Code Ann. § 67-6-314(2) (Supp. 2007) provides an exemption from the sales and use tax for durable medical equipment. Tenn. Code Ann. § 67-6-102(29) (Supp. 2007) defines "durable medical equipment" as equipment and replacement parts that a person can use repeatedly for a medical purpose, which is not "worn in or on the body" and is generally useful only to a person who is sick or injured. Note that Tenn. Code Ann. § 67-6-102(29) (Supp. 2007) specifically excludes "mobility enhancing equipment" from the definition of "durable medical equipment." In addition, Tenn. Code Ann. § 67-6-314(2) (Supp. 2007) further limits the exemption by requiring items to be "dispensed pursuant to a prescription."

Furthermore, to qualify for the sales and use tax exemption as durable medical equipment, the medical equipment must be "for home use." Tenn. Code Ann. § 67-6-314(2) (Supp. 2007). Thus, purchases of durable medical equipment by for-profit hospitals, physicians, nursing facilities and treatment centers for use in such facilities do not qualify for the exemption. On the other hand, purchases by patients of durable medical equipment that is of a nature such that it is generally understood and intended to be used in the patient's home do qualify for the exemption. For example, a blood glucose meter is durable medical equipment that does not qualify for an

exemption because it is not primarily intended “for home use.” Rather, a blood glucose meter is intended for use everywhere and is meant to be taken with the patient and used in any place the patient goes.

(3) Exemption for oxygen delivery equipment and disposable medical supplies.

Tenn. Code Ann. § 67-6-314(3) (Supp. 2007) provides an exemption for “oxygen delivery equipment,” such as oxygen tents, as well as for “disposable medical supplies,” such as oxygen masks, that are “necessary to administer or deliver medical oxygen.” No prescription is required for oxygen delivery equipment.

(4) Exemption for mobility enhancing equipment with a prescription.

Tenn. Code Ann. § 67-6-314(6) (Supp. 2007) provides an exemption for mobility enhancing equipment. Tenn. Code Ann. § 67-6-102(48) (Supp. 2007) defines “mobility enhancing equipment” as equipment used to enable or assist a person “to move from one place to another” that generally is not used by persons “with normal mobility,” which is appropriate for use “in a home or motor vehicle,” but does not include any “motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.” Note that Tenn. Code Ann. § 67-6-102(48) (Supp. 2007) specifically excludes “durable medical equipment” from the definition of “mobility enhancing equipment.” In addition, Tenn. Code Ann § 67-6-314(6) (Supp. 2007) further limits the exemption by requiring items to be “dispensed pursuant to a prescription.”

(5) Exemption for drugs, including over-the-counter drugs, for human use dispensed with a prescription.

Tenn. Code Ann. § 67-6-320(a) (Supp. 2007) provides an exemption for drugs. Tenn. Code Ann. § 67-6-102(28) (Supp. 2007) defines “drug” as a “compound, substance or preparation” that either is recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia, or National Formulary, “intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease” or “intended to affect the structure or any function of the body[.]” In addition, Tenn. Code Ann. § 67-6-320(a) (Supp. 2007) includes “over-the-counter drugs” in the exemption for “drugs,” provided that the drugs are “dispensed pursuant to a prescription.” However, Tenn. Code Ann. § 67-6-320(a) (Supp. 2007) specifically excludes “grooming and hygiene products” from the definition of “over-the-counter drugs.” Tenn. Code Ann. § 67-6-320(a) (Supp. 2007) further limits the exemption by requiring items to be “for human use.”

The exemption provisions cited above are applicable to specific items of medical equipment and supplies as follows:

1. Diabetic Meters, Lancets, Lancet Devices, Diabetic Strips, and Control Solution

Lancets, lancet devices, diabetic strips and control solution, are not included in any statutory exemption; therefore, they are taxable for purposes of the sales and use tax. Diabetic meters, or blood glucose meters, are durable medical equipment as defined by Tenn. Code Ann. § 67-6-

102(29); however, a diabetic meter does not qualify for the exemption because it is not primarily intended “for home use” as required by Tenn. Code Ann. § 67-6-314(2) (Supp. 2007). Rather, a blood glucose meter is intended for use everywhere and is meant to be taken with the patient and used in any place the patient goes.

Nonetheless, insulin and syringes used to dispense insulin for human use are exempt under Tenn. Code Ann. §§ 67-6-320(b)(1) and 67-6-314(7) (Supp. 2007), respectively.

2. Diabetic Shoes and Shoe Inserts

Diabetic shoes and shoe inserts are included in the category of orthopedic shoes, shoe lifts, inserts, arch supports and heel protectors, and therefore qualify for exemption as a prosthetic device for human use under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007). No prescription is required for a prosthetic device.

3. Power Wheelchairs- Batteries (Gel), Casters, Fork Assembly, and Parts

Power wheelchairs, including batteries (gel), casters, fork assembly and parts are exempt from sales and use tax as mobility enhancing equipment when dispensed pursuant to a prescription under Tenn. Code. Ann. § 67-6-314(6) (Supp. 2007).

4. Manual Wheelchairs, Crutches, Canes, Walkers, Rollators and Cam Walkers

Manual wheelchairs, crutches, canes, walkers, rollators and cam walkers are exempt as mobility enhancing equipment when dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(6) (Supp. 2007).

5. Braces: Neck, Ankles and Knee

Neck, ankle and knee braces are items normally to be used to brace, support or align the skeletal or muscular system, and are therefore exempt as prosthetic devices under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007). No prescription is required for a prosthetic device. However, non-medicated ace bandages, elastic bandages and gauze wraps are not defined as prosthetic devices and are taxable.

6. Lift Chairs and Lift Chair Mechanisms

Lift chairs and lift chair mechanisms are used to raise a person to a standing position and lower a person to a sitting position when the handicap individual’s natural ability to raise or lower himself is either totally or partially impaired, and are therefore exempt as mobility enhancing equipment when dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(6) (Supp. 2007).

7. Seat Assists, Gel Cushions for Seating, and Gel Overlays

Seat assists, gel cushions, and gel overlays are not included in any statutory exemption as of January 1, 2008, and, thus, are not exempt from the sales and use tax. However, through December 31, 2007, these items are exempt from the sales and use tax pursuant to the medical equipment exemption under Tenn. Code Ann. § 37-6-314 (2006), provided that the items qualify

as cushions, pillows and care seats for back supports for medical reasons that are used for support by a patient who has a decreased ability to sit or move.

8. Bedside Commodes

Bedside commodes sold to a patient are exempt from the sales and use tax as durable medical equipment for home use when dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007), falling within the category of commodes, which includes toilet safety frames and stationary commodes for use outside the bathroom, along with snap-on seats and lids, splash shields, removable backrests with wing nuts, nonskid rubber tips, and armrests for added comfort.

9. Raised Toilet Seats

Raised toilet seats are bath aids and are exempt from the sales and use tax as mobility enhancing equipment when dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(6) (Supp. 2007).

10. Heat Therapy Pumps and Pump Replacement Pads

Heat therapy pumps and replacement pads are not included in any statutory exemption, and, thus, are not exempt from the sales and use tax.

11. Wound Care Supplies: 4x4 Pads, 2x2 Pads, Surgical Tape, Gauze, Kerlex, Duoderm, and Conform

The following wound care supplies are not exempt from the sales and use tax, because they are not included in any statutory exemption: 4x4 pads, 2x2 pads, surgical tape, gauze, Kerlex, Duoderm and Conform. However, medicated dressings (including elastic, compression and gauze wraps) that are dispensed pursuant to a prescription are exempt as a drug under Tenn. Code Ann. § 67-6-320(a) (Supp. 2007).

12. Tracheotomy Kits

Tracheotomy kits are not included in any statutory exemption, and, thus, are not exempt from the sales and use tax.

13. Wound Care Supply: Gladase C

Gladase C, a medicated cream used for diabetic and decubitus ulcers, postoperative wounds, burns and various other wounds, is exempt as a drug when dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-320(a) (Supp. 2007).

14. TENS Units- Electrodes and Leads

Effective January 1, 2008, pocket-size TENS units, including electrodes and leads, that are worn on the body correct a physical malfunction, *i.e.* pain, and, therefore, are exempt from the sales and use tax as a prosthetic device under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007). No prescription is required for a prosthetic device. In addition, table-top TENS units, including

electrodes and leads, that are not worn on the body are durable medical equipment and are exempt from the sales and use tax when sold to a patient for home use and dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007).

However, through December 31, 2007, TENS units, including electrodes and leads, are not exempt from the sales and use tax because the Department has not construed TENS units to be a prosthetic device under Tenn. Code Ann. § 67-6-314(5) (2006).

15. Oxygen Concentrators- Tubing, Nasal Cannula, Filters, Tanks and Masks

Oxygen concentrators, including tubing, nasal cannula, filters, tanks and masks, are exempt as “oxygen delivery equipment and disposable medical supplies necessary to administer or deliver oxygen for human use” under Tenn. Code Ann. § 67-6-314(3) (Supp. 2007). No prescription is required for oxygen delivery equipment.

16. CPAPs- Tubing, Filters and Masks

CPAPs, including tubing, filters and masks, that are worn on the body correct a physical malfunction, *i.e.* apnea, and, therefore, are exempt from the sales and use tax as a prosthetic device under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007). In addition, table-top CPAPs, including tubing, filters and masks, are not worn on the body and, therefore, are durable medical equipment. CPAPs are primarily used while sleeping, which is generally understood and intended for use in a patient’s home, such that table-top CPAPs are exempt from the sales and use tax as durable medical equipment under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007) when sold to a patient and dispensed pursuant to a prescription.

17. Bi-PAPs- Tubing, Filters and Masks

Bi-PAPs, including tubing, filters and masks, that are worn on the body correct a physical malfunction, *i.e.* apnea, and, therefore, are exempt from sales and use tax as a prosthetic device under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007). In addition, table-top Bi-PAPs, including tubing, filters and masks, are not worn on the body and, therefore, are durable medical equipment. Bi-PAPs are primarily used while sleeping, which is generally understood and intended for use in a patient’s home, such that table-top Bi-PAPs are exempt from sales and use tax as durable medical equipment under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007) when sold to a patient and dispensed pursuant to a prescription.

18. Nebulizer- Circuits and Filters

Effective January 1, 2008, nebulizers, including circuits and filters, are durable medical equipment; however, nebulizers are not generally understood and intended to be used in the patient’s home, but rather, like blood glucose meters, nebulizers are intended for use everywhere and are meant to be taken with the patient and used in any place the patient goes. Therefore, nebulizers, including circuits and filters, are not exempt as durable medical equipment under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007), but are subject to the sales and use tax.

In addition, through December 31, 2007, nebulizers, including circuits and filters, generally are not exempt from the sales and use tax because the Department has not construed nebulizers to be exempt under the medical equipment exemption provided in Tenn. Code Ann. § 67-6-314

(2006), although, in limited circumstances, nebulizers may be exempt as equipment necessary for the administration of oxygen under Tenn. Code Ann. § 67-3-318 (2006) when sold with the oxygen.

19. GeriChairs

GeriChairs are exempt from the sales and use tax as mobility enhancing equipment when dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(6) (Supp. 2007).

20. Hospital Beds and Bed Mattresses

Hospital beds and bed mattresses, defined as a single bed with a frame in three (3) sections so the head, middle or foot can be raised as required, are durable medical equipment and are exempt from the sales and use tax when sold to a patient for home use and dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007).

21. Alternating Pressure Mattresses and Low Air Loss Mattresses

Alternating pressure mattresses and low air loss mattresses used to eliminate bed sores are durable medical equipment and are exempt from the sales and use tax when sold to a patient for home use and dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(2) (Supp. 2007).

22. Trapeze Bars

Trapeze bars are included in the definition of a bed pull-up T, which is defined as a rope with a handle attached to the base of the bed where the individual hold the handles to help pull himself to a sitting position or lower himself to recline, and are exempt from the sales and use tax as mobility enhancing equipment when dispensed pursuant to a prescription under Tenn. Code Ann. § 67-6-314(6) (Supp. 2007).

2. *Rentals*

Tenn. Code Ann. § 67-6-102(70)(A) (Supp. 2007) provides that the term “sale” means “any transfer of title or possession, or both, exchange, barter, *lease or rental*, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration.” (Emphasis added). Accordingly, whether the items of medical equipment and supplies are sold or rented to the patient does not affect the taxability of the items for purposes of the Tennessee sales and use tax. Thus, rentals of medical equipment and supplies qualify for an exemption from the sales and use tax to the same extent as sales of such items.

3. *Payments*

Medical equipment and supplies that are otherwise exempt from the sales and use tax can be paid for by private insurance, Medicare or TennCare as well as with cash and still qualify for a sales and use tax exemption.

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APPROVED: Reagan Farr
Commissioner of Revenue

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