



# COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy Analysis  
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PLR 21-006

October 20, 2021

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Re: Request for private letter ruling to determine whether medical product is exempt from sales and use tax.

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX (the “Company”), regarding the taxability of the XXXXXXXXXXXX heart monitor (the “heart monitor”), to the Colorado Department of Revenue (“Department”) pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

### Issue

Whether the heart monitor is subject to state and state-administered local sales tax in Colorado?

### Conclusion

The sale of the heart monitor to Colorado customers is subject to state and state-administered local sales tax in Colorado because the heart monitor is tangible personal property sold by a retailer and is not exempted from sales tax under the medical devices exemption.

### Background<sup>1</sup>

Company has provided the following statement of facts:

The heart monitor is temporarily implanted under the skin to monitor irregular heartbeats. This product is single use, and a prescription is required to purchase the device from the Company. The device is solely diagnostic and can be implanted for a few days or up to

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<sup>1</sup> This section generally recites the statements of fact set forth in the request as required by paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5. The recitation of particular facts in this section is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be redacted as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

three years. Once the heart data is collected, the physician reviews the recorded data to determine further treatment for heart arrhythmia.

For purposes of this private letter ruling, we are assuming the Company is selling heart monitors only to healthcare providers.

### **Discussion**

The sale of the heart monitor to Colorado customers is a retail sale of tangible personal property subject to state and state-administered local sales tax in Colorado, unless a specific sales tax exemption applies. Colorado imposes a sales tax on the retail sale of tangible personal property.<sup>2</sup> Every sale that is not a wholesale sale is a retail sale.<sup>3</sup> A wholesale sale is a sale by a wholesaler to a retailer, jobber, dealer, or other wholesaler for the purpose of resale.<sup>4</sup> In order for a sale to be a wholesale sale, “the primary purpose of the transaction must be the acquisition of the item for resale in an unaltered condition and basically unused by the purchaser.”<sup>5</sup>

Based on the statement of facts provided by the Company, the healthcare provider purchases the heart monitor not for resale, but to treat a patient by implanting the heart monitor for diagnostic purposes. Because the heart monitor is implanted in a patient, the healthcare provider appears to be both using the heart monitor and altering its condition. Consequently, the sale of the heart monitor is not a wholesale sale, and is instead a retail sale.

The heart monitor is tangible personal property under Colorado law. Tangible personal property is defined as “corporeal personal property. The term embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances that deal in and capable of being possessed and exchanged . . . .”<sup>6</sup> The heart monitor is a product. In addition, the heart monitor is capable of being possessed and exchanged. Therefore, the heart monitor is tangible personal property under Colorado law.

A retailer is required to collect sales tax on any retail sale of tangible personal property, except when such sales qualify for an exemption specifically authorized by law. Colorado exempts sales of specific types of medical devices from sales tax, such as prosthetic devices and sales of durable medical equipment.<sup>7</sup> The sale of the heart monitor does not qualify for a sales tax exemption in Colorado.

The heart monitor does not qualify for the prosthetic device sales tax exemption in Colorado. A prosthetic device is defined by rule as:

“a replacement, corrective, or supportive device, . . . and worn on or in the body to:

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<sup>2</sup> Section 39-26-104(1)(a), C.R.S.

<sup>3</sup> Section 39-26-102(9), C.R.S.

<sup>4</sup> Sections 39-26-102(18) and (19), C.R.S.

<sup>5</sup> *A.B. Hirschfeld Press, Inc. v. City and County of Denver*, 779 P.2d 1356, 1359–60 (Colo. 1988).

<sup>6</sup> Section 39-26-102(15)(a)(I), C.R.S.; 1 CCR 201-4, Rule 39-26-102(15).

<sup>7</sup> Section 39-26-717(2)(f) and (2)(j).

- (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.”<sup>8</sup>

The heart monitor is purchased by a healthcare provider and used as a diagnostic tool to monitor a patient’s irregular heartbeats. Due to the heart monitor’s diagnostic use, it does not replace, correct, or support any portion of the body and is, therefore, not a prosthetic device. Consequently, in accordance with 1 CCR 201-4, Rule 39-26-717(1)(c), the heart monitor is not exempt from sales tax under section 39-26-717(2)(f), C.R.S.

The heart monitor is also not durable medical equipment. Durable medical equipment is defined in statute as

“equipment . . . dispensed pursuant to a prescription order, that:

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Is generally not useful to a person in the absence of illness or injury; and
- (D) Is not worn in or on the body.”<sup>9</sup>

Consistent with the specification that the equipment “is not worn in or on the body,” the related rule repeatedly specifies that qualifying equipment must be “non-implanted.”<sup>10</sup>

While the heart monitor is only sold with a prescription order and is used primarily to serve a medical purpose, monitoring irregular heartbeats, the heart monitor does not qualify as “durable medical equipment” because it cannot withstand repeated use (Company specifies that the “product is single use”), and it is implanted in the body. Because the heart monitor does not meet the definition of “durable medical equipment” the sale of the heart monitor is not exempt from sales tax under section 39-26-717(2)(j), C.R.S.

Accordingly, without an applicable exemption, the Company is required to collect state and state-administered local sales tax on the retail sale of the heart monitor.

### **Miscellaneous**

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts, that all representations are true and complete, and that Company has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules

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<sup>8</sup>1 CCR 201-4, Rule 39-26-717(1)(c).

<sup>9</sup> Section 39-26-717(1)(a)(I), C.R.S. Examples of qualifying durable medical equipment include hospital beds, intravenous poles and pumps, trapeze bars, toileting aids, bath and shower aids, standing aids, adaptive car seats, communication devices, and any related accessories for such items. 1 CCR 201-4, Rule 39-26-717(1)(h).

<sup>10</sup> See, e.g., 1 CCR 201-4, Rule 39-26-717(1)(h)(i)(A), (F), (J), and (L).

promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Company's facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities. You are encouraged to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at [tax.colorado.gov](http://tax.colorado.gov) for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy Analysis  
Colorado Department of Revenue

**This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.**