



PRIVATE TAXPAYER RULING LR04-004

Janet Napolitano
Governor

J. Elliott Hibbs
Director

May 25, 2004

This private taxpayer ruling responds to your letter of March 5, 2004, requesting the Department to rule on behalf of your client . . . (“Company”) . . . that Company’s sales of contrast media or “contrast chemicals” are exempt from Arizona transaction privilege tax under the retail classification pursuant to Arizona Revised Statutes (“A.R.S.”) § 42-5061(A)(8).

The following are facts as presented in your March 5 letter:

[Company] holds an Arizona pharmacy license, allowing it to store and sell drugs, including contrast chemicals. Contrast chemicals are pharmaceutical substances used to highlight specific parts of the body (organs, blood vessels, tissues, etc.) to make them more visible during radiology studies (e.g., x-ray examinations). Contrast chemicals are usually injected into a patient (although some contrasts are administered orally or as a suppository) to act as a contrast agent during the x-ray examination. These x-rays are used to assist physicians in diagnosing patient ailments. Contrast chemicals are “legend drugs” which may only be administered with a physician’s prescription. A “legend drug” is any drug which is designated “prescription only” under federal law. See A.R.S. § 32-1975(F)(3). Contrast chemicals, such as Barium Sulfate, are labeled “prescription only” by the U.S. Food and Drug Administration.

When a physician orders an x-ray for a patient, the physician does not issue a prescription directly to the patient for the contrast, but rather “refers” the patient to the radiologist for the x-ray procedure. The radiologist (or the radiologist’s assistant under supervision by the radiologist per state law) takes the x-rays according to a fixed protocol based upon the type of test, type of contrast, type of equipment being used, and other relevant factors. Radiologists (or the clinics for which the radiologists work) purchase contrast from [Company] . . . pursuant to a written or oral purchase order. If a Radiologist’s order for contrast is made orally, [Company] is required by law to reduce this order in writing, and is required to keep the written order on file (typically, the contrast is sold pursuant to a written purchase order).

While no prescription is issued to the patient in connection with the contrast, either by the physician or the radiologist, either at the time the contrast is purchased from [Company] or at the time of the x-ray procedure, the drug is administered by or under the supervision of the radiologist, a licensed

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physician, pursuant to the referral of the treating physician (Arizona law specifically allows medical professionals to dispense or personally administer drugs or devices to a patient for a condition being treated by the health professional). The radiologist purchases the contrast (a legend drug) based upon a written purchase order or an oral order which is reduced to writing by [Company]. The patient (or appropriate third-party payor) is billed for the "x-ray" procedure, which includes the cost of the contrast. The price of the contrast is not separately stated on the bill (i.e., the contrast is not billed separate from the x-ray procedure).

Your Position

Your position is that sales of contrast chemicals by Company to licensed radiologists are exempt from the Arizona transaction privilege tax imposed under the retail classification pursuant to the A.R.S. § 42-5061(A)(8) exemption.

Conclusion and Ruling

Based on the facts provided, the Department rules that the gross proceeds of sales or gross income from sales of contrast chemicals to radiologists are exempt as sales of "[d]rugs . . . on the prescription of a member of the medical . . . profession who is licensed by law to administer such substances" pursuant to A.R.S. § 42-5061(A)(8).

The conclusion of this private taxpayer ruling does not extend beyond the facts presented in your letter of March 5, 2004.

This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law, or notification of a different department position.

The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited, nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.