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Governor

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Director

TAXPAYER INFORMATION RULING LR12-004

December 19, 2012

This taxpayer information ruling is in response to your letter dated October 21, 2011, as supplemented by your letters dated January 31 and April 9, 2012, in which you requested a taxpayer information ruling on behalf of your undisclosed client, a hospital ("Hospital"). Specifically, you requested a determination of the applicability of Arizona's use tax to Hospital's purchases of stents.

Statement of Facts:

The following is excerpted from your October 21, 2011 letter:

Hospital . . . provides a wide range of medical and surgical services which include: cardiology, open heart surgery, electrophysiology, endovascular stenting, minimally invasive surgery, interventional radiology and vascular surgery.

In connection with providing . . . medical and surgical services, Hospital purchases and uses stents. A "stent" is "a short narrow metal or plastic tube often in the form of a mesh that is inserted into the lumen of an anatomical vessel (as an artery or bile duct) especially to keep a previously blocked passageway open."¹

For example, Hospital purchases [X] stents from [Corporation A] . . . which has pioneered less invasive treatments for vascular disease. [X] is a small, expandable, slotted metal tube that is inserted through a catheter into a coronary artery. There, it acts as a scaffold to help hold the artery open in order to improve blood flow to the heart and relieve the symptoms and dangers associated with artery blockage. A stent is a permanent implant that remains in your artery.

Your January 31, 2012 letter provides the following excerpted facts:

The stents are generally provided to Hospital at no charge. The vendor basically warehouses its products at Hospital's location. When Hospital takes a stent out of the vendor's [inventory] at Hospital's location then Hospital orders a replacement and pays for the one that was used. Generally, on a monthly basis the vendor will come and check/audit the stent inventory. Rarely, Hospital will

¹ Quoted from <http://www.merriam-webster.com/medlineplus/stent>.

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pay up front for stents (generally, for bulk purchases or for soon to expire product) at a reduced price.

....

Vendors charge Hospital a single price for a stent and its built-in disposable delivery system. Stents costs vary from around \$800 to \$2,850. All stents come with a disposable delivery system to enable the stent to be placed in the body. All stent delivery systems are disposable and are discarded after their single use. Some stents' delivery system[s] [include] a balloon to expand the stent to fix it in place and some do not. There is no price difference between a stent with a delivery system that includes a balloon or balloon equivalent and those that [do not]. There is a single price that Hospital pays for a stent, regardless of whether it has a balloon-type delivery system or not.

If a stent's included delivery system has a balloon or balloon equivalent, then generally a separate balloon will not need to be purchased. Only in situations where the stent was not sufficiently expanded into place by the included balloon would an additional second balloon need to be used, after the first balloon delivery system is taken out, to finish expanding the stent to fix it in place. All of the stents at issue include delivery systems that have a balloon or balloon equivalent that fixes the stent in place.

Stents that come with a delivery system that do not have a balloon or balloon equivalent require a two-step process. First is the insertion of the stent where it needs to be located, and then after removing the delivery system of the stent, secondly, the balloon is inserted into the stent to expand and fix it in place. Vendors charge Hospital approximately \$150 for a separate balloon.

Hospital charges its customers/patients a single charge for the stent and its delivery system (regardless of whether it has a balloon or not). If a separate balloon is used, then the customer would also be charged for the balloon. For example, a doctor uses a stent with a delivery system that has a balloon, and puts it in place and expands the stent but because the stent needed further expanding used a separate balloon after the initial installation to fix the stent tighter in place. In this case the customer/patient would be charged a single charge for the stent (which included a delivery system with a balloon) and a separate charge for the second balloon.

The following is excerpted from your April 9, 2012 letter:

Each stent has a delivery system attached to it. You cannot purchase a stent without its associated delivery system. The delivery system is integral to the stent. The delivery system is used to put the stent in place. The delivery system is disposable – it is used once to place its stent in the proper location and then it

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is discarded. Without the use of the delivery device, a stent cannot be properly used.

Issues:

1. Are Hospital's purchases of stents exempt from Arizona's use tax pursuant to the exemption for prosthetic appliances in A.R.S. § 42-5159(A)(17) or otherwise exempt?
2. Is the stent delivery system that comes with the stent also exempt from tax?

Applicable Law:

Arizona Revised Statutes ("A.R.S.") § 42-5155 levies an excise tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer or utility business, as a percentage of the sales price.

A.R.S. § 42-5159(A)(17) exempts from Arizona's use tax "[p]rosthetic appliances, as defined in § 23-501, prescribed or recommended by a person who is licensed, registered or otherwise professionally credentialed as a physician, dentist, podiatrist, chiropractor, naturopath, homeopath, nurse or optometrist."

A.R.S. § 23-501(7) defines "prosthetic appliance" as "an artificial device necessary to support or take the place of a part of the body, or to increase the acuity of a sense organ."

Arizona Administrative Code ("A.A.C.") R15-5-2343(A)(12) defines "prosthetic appliance" as "an artificial device that fully or partially replaces a part or function of the human body or increases the acuity of a sense organ." In addition, A.A.C. R15-5-2343(C) states that the purchase of component and repair parts for an exempt prosthetic appliance is also exempt.

Discussion:

A.R.S. § 42-5159(A)(17) exempts from Arizona's use tax "[p]rosthetic appliances, as defined in A.R.S. § 23-501, prescribed or recommended by a person who is licensed, registered or otherwise professionally credentialed as a physician, dentist, podiatrist, chiropractor, naturopath, homeopath, nurse or optometrist." A.R.S. § 23-501, in turn, defines "prosthetic appliance" as "an artificial device necessary to support or take the place of a part of the body, or to increase the acuity of a sense organ." In addition, A.A.C. R15-5-2343(A)(12) defines "prosthetic appliance" as "an artificial device that fully or partially replaces a part or function of the human body or increases the acuity of a sense organ."

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A stent, as provided in your statement of facts, is “a short narrow metal or plastic tube often in the form of a mesh that is inserted into the lumen of an anatomical vessel (as an artery or bile duct) especially to keep a previously blocked passageway open.”² Therefore, a stent satisfies the definition of a prosthetic appliance because it is an artificial device necessary to support a part of the body. Thus, Hospital’s purchases of stents are exempt from Arizona’s use tax pursuant to A.R.S. § 42-5159(A)(17).

However, as stated in your January 31, 2012 letter, “[a]ll stents come with a disposable delivery system to enable the stent to be placed in the body. All stent delivery systems are disposable and discarded after their single use. Some stents’ delivery systems include a balloon to expand the stent to fix it in place and some do not.” Therefore, the stated purpose of the disposable delivery system to deliver the stent to the affected artery or bile duct is the same as other non-exempt items used in the procedures preceding the implant of the stent. Delivery systems that include a balloon similarly act to expand the stent and fix it in place. Therefore, the disposable delivery system, with or without a balloon, fails to support or take the place of a part of the body. Rather, the disposable delivery system is merely a step in the process of implanting the stent.

The Arizona Court of Appeals decision in *Renal West L.C. v. Arizona Department of Revenue*, 943 P.2d 769 (Ariz. App. 1997) is not dispositive of the issue of this ruling request. Unlike the solutions, testing equipment and supplies used in the dialysis process at issue in *Renal West*, the disposable delivery system is not part of an integrated process. A stent does not replace a function of the body in the same way that dialysis does. Rather, the stent supports a part of the body and the disposable delivery system, although necessary to properly implant the stent, is not a prosthetic appliance or a component part of a prosthetic appliance.

² <http://www.merriam-webster.com/medlineplus/stent>

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Conclusions and Ruling

The Department concludes that Hospital may purchase a stent that is separate from a disposable delivery system exempt from tax pursuant to A.R.S. § 42-5159(A)(17). However, a disposable delivery system, with or without a balloon, fails to satisfy the definition of a prosthetic appliance. Therefore, the purchase of said delivery system is subject to Arizona's use tax because it does not meet the exemption provided for in A.R.S. § 42-5159(A)(17). Additionally, if an exempt stent is purchased in conjunction with a taxable disposable delivery system, such that both items are purchased together for a single price, the entire transaction is subject to Arizona's use tax.

This taxpayer information ruling does not extend beyond the facts presented in your letters dated October 21, 2011, January 31, 2012 and April 9, 2012.

This response is a taxpayer information ruling (TIR) 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 information 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.

If the Department is provided with required taxpayer identifying information and taxpayer representative authorization before the proposed publication date (for a published TIR) or date specified by the Department (for an unpublished TIR), the TIR will be binding on the Department with respect to the taxpayer that requested the ruling. In addition, the ruling will apply only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The ruling may not be relied upon, cited, or introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the taxpayer information ruling. If the required information is not provided by the specified date, the taxpayer information ruling is non-binding for the purpose of abating interest, penalty or tax.