



## PRIVATE TAXPAYER RULING LR 20-012

Douglas A. Ducey  
Governor

Carlton Woodruff  
Director

September 18, 2020

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Dear \*\*, \*\*:

Thank you for your email dated February 5, 2020, requesting a private taxpayer ruling (“PTR”) on behalf of \*\*\*\*\* \*\*, \*\*. (“Taxpayer”). Specifically, you requested a determination of whether an insertable cardiac monitor (“ICM”) that is temporarily implanted under the skin to record cardiac arrhythmias is exempt from taxation pursuant to the Arizona transaction privilege tax (“TPT”) statutes.

Pursuant to Arizona Revised Statutes (“A.R.S.”) § 42-2101, the Arizona Department of Revenue (“Department”) may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

### ISSUE:

Whether Taxpayer’s gross income derived from the sale of an ICM to Arizona clinics, physician groups, surgery centers, hospitals and healthcare providers is subject to TPT.

### RULING:

#### The Department Rules as follows:

Taxpayer’s gross income derived from the sale of an ICM is subject to TPT unless specifically deductible or excluded by statute. Although the retail classification provides a deduction for prosthetic appliances, the deduction is not applicable because it is not used to support or take the place of a body part or organ, rather; it is used to diagnose a condition. Additionally, the retail deduction for durable medical equipment (“DME”) is not applicable because the ICM does not meet all of the statutory requirements to be considered DME. More specifically,

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it is not reimbursable by Medicare because physician services must be included<sup>1</sup> when it is sold and cannot be used in the home; therefore, it is not exempt DME. However, the income derived from the sale of an ICM is deductible from TPT base if sold to qualifying hospitals, health care organizations or qualifying community health centers in Arizona. These deductions apply similarly for city privilege tax purposes.

## **SUMMARY OF FACTS:**

The following facts are a summary based on your ruling request dated February 3, 2020, as well as the additional information provided in your emails dated February 4, 2020, February 5, 2020, February 24, 2020, February 26, 2020, March 18, 2020 and August 11, 2020, and a review of product manuals on your website.

Taxpayer is a medical device company with locations throughout the United States with its headquarters in \*\*\*\*\*, \*\*\*\*\*. Taxpayer sells ICMs to physician groups, hospitals, health care providers and clinics in Arizona.<sup>2</sup> Taxpayer does not sell to individual patients. Taxpayer's customers may place orders online, over the phone or through a sales representative that is present at the customer's facility or office. A prescription is required for the use of the ICM.

### ICM Description

The ICM includes several components that function together to program and retrieve data from it. These components include the CareLink programmer ("CLP"), the Patient Assistant ("PA") and the MyCareLink Patient Monitor ("MCLPM").

The ICM is sold separately from the other devices mentioned above. However, the CLP is generally used with the ICM to program and retrieve data from it. The CLP is not sold; rather, Taxpayer loans it to the customer and retains title to it.

The below figure is a screenshot from Taxpayer's website showing the different components of the ICM.<sup>3</sup>

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<sup>1</sup> See Medicare National Coverage Determinations Publication ("NCD") 100-03 Section 20.15 Electrocardiographic Services.

<sup>2</sup> Taxpayer has nexus with Arizona because they have sales representatives that may solicit sales in the state. Taxpayer also loans a programmer to its customers for use with the ICM. This provides Taxpayer with the ability to establish and maintain a market in the state for its sales and personal property owned by Taxpayer resides in the state.

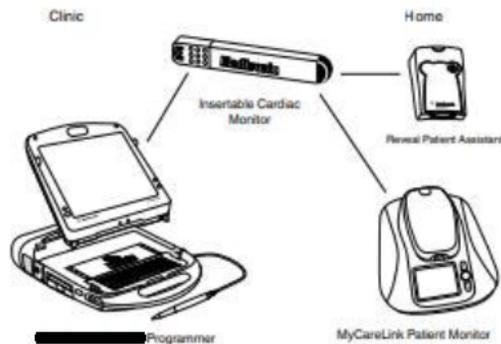
<sup>3</sup> [http://manuals.\\*\\*\\*\\*\\*.com/content/dam/emanuals/crdm/CONTRIB\\_185856.pdf](http://manuals.*****.com/content/dam/emanuals/crdm/CONTRIB_185856.pdf). Pg. 7.

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**Figure 1. System components**



The ICM is a medical device that records the patient's cardiac arrhythmias and stores the data in its memory. It is inserted into the patient's body and records events during their daily activities. It is one-third the size of an AAA battery and can be implanted for a few days or up to three years. It is used to help diagnose heart conditions by detecting arrhythmias. Long term use of the ICM may be requested by a physician that wants to monitor cardiac arrhythmias to determine why a patient is having unexplained symptoms.

The ICM is implanted under the skin through a minimally invasive, simplified insertion procedure. It is considered an electrocardiogram ("ECG")<sup>4</sup> that records the electrical signal from a patient's heart where the recording or events can be automatically activated, or patient activated. An automatically-activated event recording occurs when the ICM records cardiac events based on defaulted<sup>5</sup> or specified parameters. A patient-activated event recording occurs when the patient uses the PA to record specific cardiac events based on the physician's directions. Patient-activated events will only be recorded if the physician prescribes the PA to the patient. Otherwise, all event recordings are automatically-activated.

The ICM memory can store up to 27 minutes of event recordings from automatically detected arrhythmias and up to 30 minutes of event recordings from patient-activated episodes. The ICM provides three options for segmenting the patient-activated episode storage: up to four 7.5 minute recordings, up to three 10 minute recordings, or up to two 15 minute recordings.

<sup>4</sup> ECG and EKG have the same meaning and can be used similarly.

<sup>5</sup> A physician can set the ICM to a defaulted parameter, which is programmed in the device by Taxpayer, based on the reason for monitoring and the patient's date of birth. After the physician enters that information and selects to automatically record, the ICM will record based on what was inputted by the physician using the programmed parameters provided by Taxpayer.

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After it has accumulated 27 minutes of ECG storage on any given day, new episodes will not be stored if three episodes of a type (tachy<sup>6</sup>, brady<sup>7</sup>, pause<sup>8</sup>, or AT<sup>9</sup>) or four episodes of a type (AF)<sup>10</sup> have been stored. On the next day, it will resume recording episodes, overwriting the oldest episodes, until the day's maximum of 27 minutes of accumulated episodes has been reached.<sup>11</sup> The data stored by the ICM is retrieved using the CLP during a follow up appointment with the physician in their office. The physician retrieves the most current recordings of the automatically detected arrhythmias or if three episodes of a type (tachy, brady, pause, or AT) or four episodes of a type (AF) have been stored by the ICM, the physician will retrieve that data.

### CLP Description

The CLP is a device, paired with software, provided to and used by the physician to program the ICM to detect cardiac arrhythmias. It is not sold with the ICM, rather, Taxpayer loans it to the physician or hospital for use. The same CLP may be used multiple times and can only be used by the physician. The patient does not have access to, or the ability to, use the CLP.

The CLP is used to program arrhythmia detection parameters. As mentioned above, the parameters can be set to a default based on the information entered into it or the parameters can be programmed manually by the physician.<sup>12</sup> It is also used to obtain data from the ICM's memory and store it in the CLP. The physician generally schedules a follow-up appointment with the patient to transmit the data from the ICM using the CLP. The physician retrieves only the most current recordings stored by the ICM. Once the data is transmitted to the CLP, the physician can then view, print, and save the data collected.

The additional components mentioned, the PA and the MCLPM, are not sold with the ICM and are additional features a physician or healthcare provider may choose when purchasing from Taxpayer.

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<sup>6</sup> Tachy (ventricular tachyarrhythmia) is when the patient's heart rate increases to a rate that is higher than the programmable tachy duration or higher than 231 beats per minute ("bpm") for 30 of the last 49 beats. See [http://manuals.\\*\\*\\*\\*\\*.com/content/dam/emanuals/crdm/CONTRIB\\_215651.pdf](http://manuals.*****.com/content/dam/emanuals/crdm/CONTRIB_215651.pdf). Pg. 49.

<sup>7</sup> Brady (bradyarrhythmia) is when the patient's heart rate falls to a rate that is lower than the programmable brady threshold. *Id.*

<sup>8</sup> Pause (asystole) is when no ventricular events are sensed for a programmable period of time. *Id.*

<sup>9</sup> AF only or AT/AF (atrial fibrillation only or atrial tachyarrhythmia/atrial fibrillation) is when the patient has an atrial tachyarrhythmia or atrial fibrillation. You can choose to record AF only. The ICM detects an episode of conducted AT or AF by analyzing the irregularity of ventricular rhythm using an automatic algorithm. *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 50.

<sup>12</sup> *Id.* at 8.

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### Additional Devices

The PA and the MCLPM are additional devices that can, but need not, be prescribed by a physician.

The PA is a hand-held, battery-operated telemetry<sup>13</sup> ICM that enables the patient to activate the recording<sup>14</sup> of cardiac information in the ICM while experiencing or immediately after a symptomatic event<sup>15</sup> as directed by their physician. A physician may prescribe this component to ensure the recording of specific events when the patient experiences them.

The MCLPM gathers information automatically from the ICM and transmits the information to the MyCareLink Network<sup>16</sup> which is accessible by the patient's physician. A physician may prescribe this component to receive data from the ICM every day.<sup>17</sup> This allows the physician to receive the data quickly and without the patient coming into the physician's office. When the ICM is used without the MCLPM, the transmission of stored data is not daily, rather, it is obtained from the patient's ICM using the CLP during a follow up appointment with the physician in their office. The physician will only retrieve the most recent recordings.

### Medicare Information - Electrocardiographic Services

A Healthcare Common Procedure Coding ("HCPC") system code is assigned to the ICM, C1764, which is labeled as an event recorder, cardiac (implantable) for Medicare purposes.

The ICM, when sold as a total diagnostic system, is approved for Medicare coverage per Medicare National Coverage Determinations Publication ("NCD") 100-03 Section 20.15 Electrocardiographic Services.<sup>18</sup> The NCD provides general information on electrocardiographic services and what must be indicated for the service to be covered by Medicare. Medicare covers transtelephonic electrocardiogram ("EKG") transmissions<sup>19</sup> as a

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<sup>13</sup> Telemetry refers to the process of recording and transmitting the readings of the device.

<sup>14</sup> The patient can hold the PA over the implanted ICM and press the record button to record a cardiac event.

<sup>15</sup> See [http://manuals.\\*\\*\\*\\*\\*.com/content/dam/emanuals/crdm/CONTRIB\\_215651](http://manuals.*****.com/content/dam/emanuals/crdm/CONTRIB_215651). Pg. 8.

<sup>16</sup> Web-based network that captures the data transmitted from the ICM to the MCLPM through a cellular telephone connection to the website. The physician can access the website to view the data at any time. *Id.* at 26.

<sup>17</sup> The MCLPM transmits data from the ICM at a predetermined time each day, usually when the patient is sleeping. The transmission is scheduled by the physician using the CLP.

<sup>18</sup> [https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/ncd103c1\\_Part1.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/ncd103c1_Part1.pdf). Pg. 52.

<sup>19</sup> A transmission from the device through either a telephone line or internet-based in-home computer.

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diagnostic service with specific indications.<sup>20</sup> Coverage is further limited to the amounts payable with respect to the physician's service in interpreting results of such transmissions, including charges for rental of the equipment. For Medicare coverage purposes, the ICM used by the patient is part of a total diagnostic system and is not considered DME separately.<sup>21</sup>

## **DISCUSSION AND LEGAL ANALYSIS:**

Arizona's TPT differs from the sales tax imposed by most states. It is a tax on the privilege of conducting business in the State of Arizona. Differing from a true sales tax, the TPT is levied on income derived by the seller, who is legally allowed to pass the economic expense of the tax on to the purchaser. However, the seller is ultimately liable to Arizona for the tax. The Arizona TPT is imposed under sixteen separate business classifications. County excise taxes are imposed under A.R.S. § 42-6103 on each person engaging or continuing in the county in a business taxed under chapter 5, article 1 of Title 42 and A.R.S. § 42-5352(A). Accordingly, all sales subject to TPT are also subject to applicable county excise taxes.

### Retail Classification

A.R.S. § 42-5061 imposes the TPT under the retail classification. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. A.R.S. § 42-5061(V)(4) defines "selling at retail" as "a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property. A.R.S. § 42-5001(21) defines "tangible personal property" as "personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses." All sales of tangible personal property are subject to the TPT under the retail classification unless specifically deductible or excluded by statute.

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<sup>20</sup> "Covered uses are to: (a) detect, characterize, and document symptomatic transient arrhythmias; (b) initiate, revise, or discontinue arrhythmic drug therapy; or, (c) carry-out early post-hospital monitoring of patients discharged after myocardial infarction (MI); (only if 24-hour coverage is provided, see C.5. below). "Additionally, the transmitting ICMs must meet at least the following criteria: (a) they must be capable of transmitting EKG Leads I, II, or III; and (b) the tracing must be sufficiently comparable to a conventional EKG." See [https://cms.gov/Regulations-and-Guidance/Manuals/Downloads/ncd103c1\\_Part1.pdf](https://cms.gov/Regulations-and-Guidance/Manuals/Downloads/ncd103c1_Part1.pdf). Pg. 52 of NCD 100-03 Section 20.15 Electrocardiographic Services.

<sup>21</sup> *Id.*

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A.R.S. § 42-5061(A)(9) provides a deduction from the retail classification for “[p]rosthentic appliances as defined in A.R.S. § 23-501 and as prescribed or recommended by a health professional licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17, or 29.”<sup>22</sup>

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.” In addition, Arizona Administrative Code (A.A.C.) R15-5-156(A)(12) defines a “prosthetic appliance” as “an artificial device which fully or partially replaces a part or function of the human body or increases the acuity of a sense organ.”

A.R.S. § 42-5061(A)(13) provides a deduction for sales of “[d]urable medical equipment which has a center for Medicare and Medicaid services common procedure code, is designated reimbursable by Medicare, is prescribed by a person who is licensed under title 32, chapter 7, 8, 13, 14, 15, 17 or 29,<sup>23</sup> can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use, and is used, in the home.” Each of these requirements must be met in order for medical equipment to be deemed deductible durable medical equipment.

A.R.S. § 42-5061(25)(a) provides a deduction for tangible personal property sold to a qualifying hospital as defined in A.R.S. § 42-5001.<sup>24</sup>

A.R.S. § 42-5061(25)(b) provides a deduction for tangible personal property sold to a qualifying health care organization as defined in A.R.S. § 42-5001<sup>25</sup> if the tangible personal

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<sup>22</sup> These chapters refer to podiatrists, doctors of chiropractic, dentists, physicians and surgeons, naturopathic physicians, nurses, osteopathic physicians and surgeons, and homeopathic physicians.

<sup>23</sup> These chapters refer to podiatrists, doctors of chiropractic, physicians and surgeons, naturopathic physicians, nurses, doctors of optometry, osteopathic physicians and surgeons, and homeopathic physicians.

<sup>24</sup> A.R.S. § 42-5001(15): “Qualifying hospital means any of the following: (a) A licensed hospital that is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (b) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center that provides medical services, nursing services or health related services and is not used or held for profit; (c) A hospital, nursing care institution or residential care institution that is operated by the federal government, this state or a political subdivision of this state; or (d) A facility that is under construction and that on completion will be a facility under subdivision (a), (b) or (c) of this paragraph.

<sup>25</sup> A.R.S. § 42-5001(13): “Qualifying health care organization means an entity that is recognized as nonprofit under section 501(c) of the United States internal revenue code and that uses, saves or invests at least eighty percent of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted auditing standards and filed annually

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property is used by the organization solely to provide health and medical related educational and charitable services.

A.R.S. § 42-5061(25)(d) provides a deduction for tangible personal property sold to a qualifying community health center as defined in A.R.S. § 42-5001.<sup>26</sup>

### City Tax

It is important to note, the imposition of city privilege taxes is separate and distinct from the state's TPT and accompanying county excise taxes. As with the state's TPT, city privilege taxes are imposed on the vendor for the privilege of engaging in business in the city. The Model City Tax Code ("MCTC") was created in order to impose and administer city privilege taxes. Similar to Arizona's TPT, city privilege taxes are imposed "upon persons on account of their business activities." See MCTC § -400(a)(1). All Arizona cities follow the MCTC in the imposition of their privilege tax based upon their local ordinances. However, certain options exist, allowing each city to alter or qualify the imposition of its privilege tax.<sup>27</sup>

A.R.S. § 42-6017 addresses the city privilege taxes in relation to the retail classification. It provides that "[e]xcept as provided in this section, A.R.S. § 42-5061 supersedes all city or town ordinances or other local laws insofar as the ordinances or local laws now or hereafter relate to the taxation of business activities classified under A.R.S. § 42-5061." That section also provides certain exceptions where a city may exempt or tax specific items that are not taxable or exempt by the state provisions. In this case, the city provisions are the same as the state for purposes of this ruling.

### Discussion

The issue is whether gross income derived from the sale of Taxpayer's ICM, not including the additional components sold or loaned by Taxpayer, to clinics, physician groups, surgery centers, hospitals and healthcare providers in Arizona, is subject to TPT.

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with the department. Monies that are used, saved and invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty percent requirement."

<sup>26</sup> A.R.S. § 42-5001(12): "Qualifying community health center: (a) Means an entity that is recognized as nonprofit under section 501(c)(3) of the United States internal revenue code, that is a community-based, primary care clinic that has a community-based board of directors that is either: (i) the sole provider of primary care in the community; or (ii) a nonhospital affiliated clinic that is located in a federally designated medically underserved area in this state; (b) Includes clinics that are being constructed as qualifying community health centers."

<sup>27</sup> See <https://modelcitytaxcode.az.gov>.

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### Prosthetic Appliance Deduction

Under A.R.S. § 42-5061(A)(9), the income derived from sales of prosthetic appliances are deductible from the retail tax base. A prosthetic appliance is used to support or take the place of a body part or to increase the acuity of a sense organ. When implanted, the ICM does not serve any purpose other than to record cardiac arrhythmic events for a medical diagnosis and/or treatment. Therefore, this deduction is not applicable because the ICM does not take the place of a body part or increase the acuity of a sense organ.

City privilege tax is assessed in the same manner as the state/county TPT. Therefore, this deduction is not applicable to the ICM for city privilege tax purposes.

### DME

Under A.R.S. § 42-5061(A)(13), sales of DME are deductible from the retail tax base. This deduction only applies to DME that meets all of the statutory requirements as follows:

1. Has a Centers for Medicare and Medicaid Services common procedure code;
2. Is designated reimbursable by Medicare;
3. Is prescribed by a person who is licensed under Title 32;
4. Can withstand repeated use;
5. Is primarily and customarily used to serve a medical purpose;
6. Is generally not useful to a person in the absence of an illness or injury; and
7. Is appropriate for use, and is used, in the home.

1. DME must have a Centers for Medicare and Medicaid Services common procedure code.

The Department's *Procedure for Implementation of the Exemption For Durable Medical Equipment – TPP 93-1* discusses this requirement. TPP 93-1 notes:

“...[T]he health care procedure code (HCPC) is for payment determinations and, therefore, not required by Medicare for reimbursement purposes. However, a code is eventually assigned to the equipment if Medicare intends to reimburse for it.”

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Thus, if Medicare reimburses for DME, a HCPC code is usually assigned. Taxpayer provided a HCPC code of C1764<sup>28</sup> for the ICM only. Therefore, the Taxpayer's ICM has a Centers for Medicare and Medicaid Services common procedure code.

2. DME must be designated reimbursable by Medicare.

DME is designated reimbursable by Medicare if the indications in the NCD are met.<sup>29</sup> According to the NCD, an ICM is only one part of a total diagnostic system<sup>30</sup> and is not considered DME separately.<sup>31</sup> Therefore, when sold on its own, the ICM is not reimbursable by Medicare.

3. DME cannot be given to a patient without a prescription from a prescribing doctor.

DME itself does not have to be purchased pursuant to a prescription if purchased by a licensed professional. The purchase of a medical device by a physician is considered prescribed by a person who is licensed under Title 32. *RenaWest L.C. v. Ariz. Dep't. of Revenue*, 189 Ariz. 409, 943 P.2d 769 (1997) (A for-profit business that provided prosthetic devices to patients whose doctors had prescribed dialysis was entitled to exemption from use tax, on theory that prosthetic devices which it purchased were "prescribed by a physician," even though business did not itself have doctor's prescription or recommendation to purchase dialysis equipment). Thus, the

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<sup>28</sup> This code is designated for an implantable cardiac event recorder. The following website provides an excel file list of all HCPC codes where the code can be found:

<https://www.cms.gov/Medicare/Coding/HCPCSReleaseCodeSets/Alpha-Numeric-HCPCS-Items/2020-Alpha-Numeric-HCPCS-File>.

<sup>29</sup> Taxpayer indicated that their ICM is reimbursable by Medicare using the NCD, Section 20.15 Electrocardiographic Services

<sup>30</sup> The total diagnostic system includes interpretation and review of data by a physician as stated in the NCD. See [https://cms.gov/Regulations-and-Guidance/Manuals/Downloads/ncd103c1\\_Part1.pdf](https://cms.gov/Regulations-and-Guidance/Manuals/Downloads/ncd103c1_Part1.pdf). Pg. 52 of NCD 100-03 Section 20.15 Electrocardiographic Services.

<sup>31</sup> See [https://cms.gov/Regulations-and-Guidance/Manuals/Downloads/ncd103c1\\_Part1.pdf](https://cms.gov/Regulations-and-Guidance/Manuals/Downloads/ncd103c1_Part1.pdf). Pg. 52 of NCD 100-03 Section 20.15 Electrocardiographic Services, Section B "Nationally Covered Indications." Coverage is further limited to the following indications: "Covered uses are to: (a) detect, characterize, and document symptomatic transient arrhythmias; (b) initiate, revise, or discontinue arrhythmic drug therapy; or, (c) carry-out early post-hospital monitoring of patients discharged after myocardial infarction (MI); (only if 24-hour coverage is provided, see C.5.)." "Additionally, the transmitting devices must meet at least the following criteria: (a) they must be capable transmitting EKG Leads, I, II, or III; and, (b) the tracing must be sufficiently comparable to a conventional EKG." A previous NCD, from 2004, also indicates that a recording ICM is not DME separately but only one part of a total diagnostic system. <https://www.cms.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=179&ncdver=1&bc=AAAAIAAABAAA&>.

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sale of the ICM to doctors and hospitals satisfies the requirement that it must be prescribed by a person who is licensed under title 32.<sup>32</sup>

4. DME must be able to withstand repeated use.

Generally speaking, medical supplies which are disposable, single-use items by nature, are not considered durable within the meaning of the definition of DME because they cannot withstand repeated use.<sup>33</sup> The ICM itself is one-time use as it is implanted once and then discarded, not used repeatedly. However, if an item is considered part of an exempt integrated system, then all items required as part of the system, as a whole, is considered exempt as well. *Dep't of Revenue v. Cyprus Sierrita Corp.*, 177 Ariz. 301, 867 P.2d 871 (1994) (chemicals meet the definition of "machine" because they were an "integral part of a complicated process"). See also *RenaWest L.C. v. Ariz. Dep't of Revenue*, 189 Ariz. 409, 943 P.2d 769 (1997) (retail exemption for prosthetic appliance applied to solutions, testing equipment, and supplies used in the dialysis process in addition to the equipment used because dialysis is an integrated process, and all the items are necessary to safely perform the procedure).

The Taxpayer's ICM is inserted under the skin only once and remains in place for its prescribed duration, which can be up to three years. The ICM cannot be re-inserted and is disposed of after use, therefore, it is a single-use item. However, the ICM, when used with the CLP, would be considered an integrated system. The Centers for Medicare and Medicaid Services has reviewed the issue of durability as it relates to blood glucose monitors. They indicated that, "[w]e review the receiver as the primary component that performs the primary medical function and that is the component that assesses the issue of durability."<sup>34</sup> Here, the CLP is similar to the blood glucose receiver because it retrieves the data and stores it for the physician to review, interpret and print or save. This is the primary medical function because without it the physician would be unable to retrieve and interpret the data stored in the ICM. When these items function as part of an integrated system, the ICM is considered to be able to withstand repeated use.<sup>35</sup>

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<sup>32</sup> Also note that the sale for resale deduction could also apply. See A.A.C. R15-5-107.

<sup>33</sup> [https://azdor.gov/sites/default/files/RULINGS\\_TPT\\_2018\\_18-005-D.pdf](https://azdor.gov/sites/default/files/RULINGS_TPT_2018_18-005-D.pdf). Pg. 6.

<sup>34</sup> See CMS Ruling: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings/Downloads/CMS1682R.pdf> pg. 10.

<sup>35</sup> See CMS Ruling: <https://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings/Downloads/CMS1682R.pdf>. Pg. 10-11.

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5. DME must be primarily and customarily used to serve a medical purpose.

The ICM is primarily and customarily used to serve a medical purpose because it is used to help determine the cause of a patient's cardiac arrhythmia which may require further treatment.

6. DME must generally not be useful to a person in the absence of illness or injury.

A doctor normally prescribes the ICM to someone that is having possible or reoccurring cardiac arrhythmia. Therefore, it would not be useful to a person in the absence of illness or injury.

7. DME must be appropriate for use, and is used, in the home.

The statutes and the NCD do not provide a definition for use in the home. "Use" is defined in the dictionary to mean the ability or power to use something.<sup>36</sup> "Ability" is defined as the quality or state of being able or physical power to do something.<sup>37</sup> "Power" is defined as the ability to act or produce an effect.<sup>38</sup>

The ICM is a monitor that provides the patient's physician with data to assist in diagnosing a condition or to change a course of treatment. This data is provided to the physician only when it is downloaded by the physician through the use of the CLP (or another device/network provided by the Taxpayer not being analyzed in this letter) at the physician's office. Therefore, the ICM is not appropriate for home use.

In conclusion, the Taxpayer's ICM does not meet the statutory requirements to be considered DME because the sale of it would not be covered by Medicare and it cannot be used in the home.

City privilege tax is assessed in the same manner as the state/county TPT. Therefore, the Taxpayer's ICM also does not meet the DME requirements for deduction from the city privilege tax.

Conclusions

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<sup>36</sup> <https://www.merriam-webster.com/dictionary/use>.

<sup>37</sup> <https://www.merriam-webster.com/dictionary/ability>.

<sup>38</sup> <https://www.merriam-webster.com/dictionary/power>.

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Taxpayer's ICM does not qualify as a prosthetic appliance because it is not used to support or take the place of a body part or organ when implanted. This deduction is also not applicable to the city privilege tax.

Taxpayer's ICM is not DME because it is not designated reimbursable by Medicare because it is only one part of a total diagnostic system, which is unique from other DME, and it is not appropriate for use in the home. This deduction is also not applicable to the city privilege tax.

The ICM is likely exempt from TPT when sold to qualifying hospitals, qualifying health care organizations or qualifying community health centers. This deduction is also applicable to the city privilege tax.

**This response is a private taxpayer ruling and the determinations herein are 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 private 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. In addition, this private taxpayer ruling only applies to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.**