



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

March 5, 2018

[REDACTED]

RE: [REDACTED] – Sales Tax Liability

Dear [REDACTED]:

Thank you for your October 30, 2017, correspondence requesting a Technical Advice Letter regarding the application of the Michigan Sales Tax to two specific products that will be sold by your client, [REDACTED] (“[REDACTED]”) to Michigan customers. The Michigan Department of Treasury (Department) has determined that your request meets the criteria for a Technical Advice Letter as set forth in MCL 205.6a and RAB 2016-20. You may rely upon this Technical Advice Letter only if the facts provided to the Department are accurate and complete. You may continue to rely on this Technical Advice Letter until it is revoked in writing, until the effective date of an amendment to the law upon which the Technical Advice Letter is based, or until the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or expired that overrules or modifies the law upon which the Technical Advice Letter is based.

Factual Background. [REDACTED] is a [REDACTED] corporation registered to do business in Michigan and is in the business of manufacturing and selling various products and devices. Your Technical Advice Letter request relates to the following two products.

1. [REDACTED]. [REDACTED] sells an FDA-regulated metal [REDACTED]. This product is patient-specific manufactured and only available under prescription from a health professional (dentist). The [REDACTED] is screwed into dental implants already placed in the mouth of edentulous patients. The product is custom made using oral scans and dentist's specifications on filled-out and signed prescriptions. The product is also sold to dental laboratories and denturists who incorporate the product into a denture which is then sent to a dentist for fixation in a patient's mouth. The product is labeled “Rx Only” to indicate that it is to be dispensed only by prescription.
2. **Anti-Snoring and Sleep Apnea Device.** [REDACTED] sells an FDA-regulated anti-snoring and sleep apnea device qualified as a therapeutic dental device by the FDA. This product is patient-specific manufactured under prescription from a health professional

(dentist) and is an intraoral mandibular advancement device designed to alleviate or eliminate or treat snoring and sleep apnea. The device is not permanently incorporated into a patient's mouth as they can remove it as they wish. The device is custom-made using oral scans and dentist's specifications on filled-out and signed prescriptions. This device is sold to dental clinics and dental laboratories who sell the device to their patients. The label of the product "Rx Only" specifies that the product is to be dispensed only by prescription.

Technical Advice Letter Request. Michigan recently amended its law effective July 1, 2017, to exempt dental prostheses from sales and use tax. MCL 205.54a(1)(o). You ask the two questions below. Our responses follow.

Question 1: Are the [REDACTED] sold to dental laboratories exempt from the Michigan Sales Tax under the industrial processing exemption? If so, does [REDACTED] need an exemption certificate from these dental laboratories for the exemption to apply or does such exemption apply automatically?

Answer 1: Under current law, a dental prosthesis is *per se* exempt from sales and use taxes. MCL 205.54a(1)(o). A dental prosthesis is defined in 205.51a(f) as:

a bridge, crown, denture, or other similar artificial device used to repair or replace intraoral defects such as missing teeth, missing parts of teeth, and missing soft or hard structures of the jaw or palate.

Consequently, since it appears that the [REDACTED] qualify as dental prostheses, the sale of [REDACTED] to a dental laboratory should be exempt from the Michigan sales and use tax. No exemption certificate is necessary.

Question 2: Does the sale of the anti-snoring and apnea device described above qualify for the medical equipment exemption? If so, does [REDACTED] need an exemption certificate from purchasers for the exemption to apply or does such exemption apply automatically? Alternatively, does the resale exemption apply?

Answer 2: Under Michigan law, there is an exemption for durable medical equipment and an exemption for prosthetic devices. Anti-snoring and sleep apnea devices may qualify for the prosthetic device exemption if they are sold at retail pursuant to a prescription and otherwise comply with the requirements of MCL 205.51a(p) (e.g. if the devices correct a physical deformity or malfunction of the body or support a weak or deformed portion of the body). They do not qualify for the durable medical equipment exemption as they are worn in or on the body. See MCL 205.51a(i). Alternatively, if [REDACTED] is selling the device to a third party that is the retailer of the device, you may accept a resale exemption claim from the purchaser. In either case you must obtain from the purchaser a claim for exemption that meets the requirements set forth in RAB 2016-14.


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If I can be of further assistance, please feel free to contact me at (517) 373-9600.

Sincerely,

Michael A. Eschelbach, Director
Tax Policy Bureau