
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING # 98-9

SUBJECT: Medical Products - Artery Disease
(Sales & Use Taxes)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-910(A) (Supp. 1997)
S. C. Code Ann. Section 12-36-1310(A) (Supp. 1997)
S. C. Code Ann. Section 12-36-2120(28) (Supp. 1997)
S. C. Code Ann. Section 12-36-110 (Supp. 1997)
S. C. Regulation #117-174.257

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. Are sales of the following items exempt from the sales and use taxes?
 - (a) Coronary stent catheters
 - (b) Coronary guide wires
 - (c) Coronary guide catheters
 - (d) Accessories -Indeflator inflation device; Angioject syringe; Hemostatic valve;Guide wire inducer;Torque device;Priority Pack accessory kit; and, Guide wire accessory kit
 - (e) stents
2. Can the above items be sold to hospitals for resale if the hospitals separately itemize them on the patient's bill?
3. How would South Carolina tax purchases of the stents if purchased by the hospitals separately from the coronary angioplasty balloon catheter?

Conclusions:

1. Sales of the above-listed items are not exempt from the sales and use taxes.
2. The above items cannot be sold to hospitals for resale, whether the hospitals separately itemize them on the patient's bill or not. All sales of such items to hospitals are retail sales subject to the tax.
3. If the stents are purchased by hospitals separately from the coronary angioplasty balloon catheters, their purchases would be taxable. It doesn't matter if they are purchased separately.

Facts:

The items in question are sold to hospitals for use by physicians in the treatment of coronary artery disease through a procedure called balloon angioplasty. Balloon angioplasty is a medical procedure used to widen narrowings in the coronary artery without surgery. Narrowings are caused by a gradual build-up of fat (cholesterol) or calcium deposits within the artery walls.

The major challenge to angioplasty is clinical restenosis, or the renarrowing of the blood vessel following the angioplasty procedure. Clinical restenosis can manifest as either the collapse of the artery as a result of the weakening of the artery walls following angioplasty or as the reoccurrence of the cholesterol or calcium deposits within the artery wall. Clinical restenosis may occur immediately following the angioplasty procedure, or anytime over the next several months or years. Treatment of clinical restenosis generally requires a subsequent angioplasty procedure or, in more severe instances, surgery. Clinical restenosis occurs in approximately twenty to thirty percent of patients undergoing angioplasty procedures.

Coronary stenting is a technique which mechanically props open the artery through implementation of a small, latticed stainless steel tube at the site of the narrowing. The stainless steel tube - the stent - is premounted on a coronary angioplasty balloon catheter. As the balloon catheter is inflated during angioplasty, the stent expands and is compressed against the artery walls. This technique of mechanically propping open the artery with the stent greatly reduces the rate of clinical restenosis.

After the plaque has been compressed and the artery has been opened sufficiently, the deflated coronary stent catheter, coronary guide wire and coronary guiding catheter are removed and disposed. The stent remains permanently in the body, holding the artery open and thus improving blood flow.

The items listed in Question #1 as "accessories" are used to introduce the coronary stent catheter, coronary guide wire and coronary guiding catheter into the body. These items are also removed once the procedure is complete.

Discussion:

Code Section 12-36-910(A) imposes the South Carolina sales tax "upon every person engaged or continuing within this State in the business of selling tangible personal property at retail."

Code Section 12-36-1310(A) imposes the use tax “on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State.”

In other words, for the sales or use tax to be imposed, there must be a retail sale of tangible personal property.

The term “retail sale” is defined in Section 12-36-110, in part, as “all sales of tangible personal property except those defined as wholesale sales.” Section 12-36-120 defines “wholesale sale,” in part, as “a sale of tangible personal property...for resale, and do[es] not include sales to users or consumers not for resale.”

Section 12-36-110 also includes in the definition of “retail sale”:

(i) sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions...if furnished as a part of the service rendered. These companies are deemed to be the users or consumers of the property.

Furthermore, Regulation #117-166 provides:

Hospitals, infirmaries, sanitariums, nursing homes and like institutions are engaged primarily in the business of rendering services. They are not liable for the sales tax with respect to their gross proceeds or receipts from meals, bandages, dressings, drugs, x-ray photographs and other tangible personal property where such property is used in the rendering of the primary medical service to patients. This is true irrespective of whether or not such tangible items are billed separately to their patients. Hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users or consumers of such tangible personal property.... (Emphasis added.)

Because the items in question are furnished by hospitals as part of the services rendered by the hospitals, the hospitals are the users or consumers of the items. Therefore, based on Section 12-36-110(i) and Regulation #117-166, the sales in question are retail sales.

Having established that sales of “drugs, prosthetic devices, and other supplies to hospitals” are retail sales, we must next look to the law to determine whether sales of any of the aforementioned items come within an exemption.

The exemption pertinent to the matter at hand is found in Section 12-36-2120 (28)(a), which exempts sales of “medicine and prosthetic devices sold by prescription.”

We first consider whether the items in question are “medicine.”

The term “medicine” is defined in Department Regulation # 117-174.257, in part, as “a substance or preparation used in treating disease.” In addition, the S.C. Board of Pharmacy, in Regulation #99-2, states:

... ‘Drug or Medicine’ means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or the National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis,

cure, mitigation, treatment, or prevention of diseases in man or other animals; and (3) articles (other than food) intended to affect the structure of any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in (1), (2), or (3); but does not include devices or their components, parts, or accessories....(Emphasis added.)

Based on the language in the two above-quoted regulations, the items in question are not medicines. They are devices and accessories.

We next consider whether the items are “prosthetic devices.”

Department Regulation #117-174.257 defines the term “prosthetic device” as:

an artificial device to replace a missing part of the body. Eyeglasses, contact lens, hearing aids and orthopedic appliances, such as braces, wheelchairs and orthopedic custom-made shoes, do not come within the exemption.

Based on the information supplied by the taxpayer, the coronary stent catheters; coronary guide wires; coronary guide catheters; and the accessories are not prosthetic devices. They are tools or instruments used by the doctor to perform the angioplasty procedure. They do not replace a missing part of the body.

Lastly, we address the stent which remains in the body.

Note, referring to the above-quoted regulation, that while items such as braces, wheelchairs and orthopedic shoes do facilitate a particular function of the body, they do not replace a missing part of the body. Therefore, they are not prosthetic devices.

In determining what is a “dental prosthetic device”, the Department, in Revenue Ruling #90-1, quoted Attorney General Opinion #77-9, dated January 10, 1977, as follows:

By definition, a prosthesis is any artificial organ or part replacing a missing natural one.....Braces, which give support or stability to a limb or joint are not replacement parts, hence are not considered prosthesis; instead, they are known as orthotic (‘straightening’) devices.

The stent, even though it does remain in the body, is not a prosthetic device because it does not replace a missing part of the artery. The stent remains permanently in the body, holding the artery open and thus improving blood flow. The stent does allow the artery to function normally, but it does not replace a missing part of the artery.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank III, Director

Columbia, South Carolina
April 7, _____, 1998