**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-1999-70** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Products used in health care and sports medicine areas; braces, cold compression therapy, blood flow equipment and blood circulation equipment.** |
| **Keywords:** |  |
| **Approval Date:** | **03/11/1999** |

**Body:**

Office of Policy & Research

March 11, 1999

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Kansas Sales Tax

Dear XXXXX,

Your correspondence of February 17, 1999, has been referred to my attention. Its contents are duly noted. Your letter states as follows:

Our firm represents a client who is located outside of your state and who is involved in the manufacture of products which are used primarily in the health care and sports medicine areas.

We have segregated the primary products into four categories and request you to advise us in writing as to the taxability of each item in your state.

In order to respond to your inquiry, it is first necessary to inform you the Kansas retail sales tax is imposed by K.S.A. 79-3603. Subsection (a) of the statute provides, in part, for the imposition of sales tax on:

(a) The gross receipts received from the sale of tangible personal property at retail within this state.

Exemptions from Kansas sales tax are controlled by K.S.A. 79-3606. The statute provides, in subsections (b) and (r), for the exemption from sales tax of:

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, water, electricity or heat to others and such items of personal property or services are used on proposed to be used in such business.

(r) all sales of prosthetic or orthopedic appliances prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry. For the purposes of this subsection, the term prosthetic and orthopedic appliances means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body; used to alleviated the malfunction of any part of the body; or used to assist any disabled person in leading a normal life by facilitating such person's mobility; but such term shall not include motor vehicles, accessories to be attached to motor vehicles or personal property which when installed becomes a fixture to real property.

The four categories described in your letter, and our responses concerning their taxability, are listed below.

Q1. **Braces** - They offer many different types of braces. These are considered Class I, where a prescription is not necessary. Ninety eight percent of all sales are based on a physician’s order and advice. The walking brace can be used in lieu of a plaster cast. It offers complete immobilization of the leg. Other braces are used for strains or sprains. They support the ankle inside and outside, but allow movement up and down. Both types of braces aids a bodily function, alleviates physical incapacity, supports part of the human body, external support prescribed for the purpose of correction or injuries to a bone, apparatus designed to activate or supplement a weakened or atrophied limb or function.
A1. Braces do fall within the perimeters of K.S.A. 79-3606(r). Therefore, they would be exempt from sales tax if sold pursuant to a doctor's prescription.

Q2. **Cold Compression Therapy** - This system applies controlled compression to minimize hemothrosis (blood clotting) and swelling along with the cold to minimize pain. The system has three basic components - a pocket wrap which holds the cold water that covers the injured area, a cooler that holds enough water and ice for 6 to 8 hours of therapy, and a tube that exchanges the water between the cooler and the pocket wrap. Depending on the injured area, it is used for acute sprains, strains, post operative surgery, trauma, rehabilitation, hamstring pulls, contusions, and other soft tissue injuries. Cold Compression Therapy is also classified as Class I and does not require a prescription however it is used under a doctor’s advice.
A2. These devices are used for treatment, but do not fall within the perimeters of K.S.A. 79-3606(r). Therefore, they would be subject to tax.
Q3. **Blood Flow Equipment** - A hospital based system that helps prevent blood clots in the veins in the legs, usually a problem after surgery. This system speeds up the blood flow to prevent clotting. It is used after surgery in lieu of blood thinners and anticoagulants. It is classified as Class II, sold only under the advice of a physician. Sales are stringently regulated by the FDA with the required 510k filing. We also sell covers so that each patient gets a fresh clean cover.
A3. Based on the limited description you have provided, as a hospital based system, these devices may fall within the perimeters of K.S.A. 79-3606(b). In addition, these devices appear to fall within the perimeters of K.S.A. 79-3606(r). Therefore, they would be exempt from sales tax if sold pursuant to a doctor's prescription.

Q4. **Blood Circulation Equipmen**t - This system prevents the abnormal excess accumulation of fluid in tissue. It is used to treat lymphodema, venus ulcers (skin ulcers that will not heal). It stabilizes circulation, increases oxygen and tissue tension and is also used by diabetic patients that have slow blood circulation.
A4. Based on the limited description you have provided, these devices appear to fall within the perimeters of K.S.A. 79-3606(r). Therefore, they would be exempt from sales tax if sold pursuant to a doctor's prescription.

Your letter goes on to state, “Our final area of concern is the tax treatment of shipping charges in your state. All products are shipped United Parcel Service (either “red” or “blue”).”

In response to your inquiry, please be advised if the item being sold is subject to tax, shipping and freight charges imposed by the retailer are also subject to tax. This is true whether the freight charge is included in the total product price on the purchase order or separately stated. Conversely, if the item being sold is not subject to tax, shipping and freight charges imposed by the retailer are not subject to tax. [See K.S.A. 79-3602(g) and (h).]

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

JW:jw

**Date Composed: 03/29/1999 Date Modified: 10/11/2001**