

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809

KURT KAWAFUCHI  
DIRECTOR OF TAXATION

STANLEY SHIRAKI  
DEPUTY DIRECTOR

April 8, 2010

**LETTER RULING NO. 2010-07**

[redacted text]

Re: **Application of General Excise Tax Wholesale Rate to Sales of Medical Supplies**

Dear [redacted text]:

This responds to the letter of [redacted text] from your authorized representative, regarding the application of the general excise tax. We have only considered statements that you made in your letter, and we have not independently examined them. Based on this information, we understand the facts and the issues to be as follows.

[redacted text]

**Represented Facts**

The Taxpayers, S1 and S2, are Hawaii limited liability companies, organized under Hawaii Revised Statutes (HRS) chapter 428. The Taxpayers are for-profit medical services providers.

Medical services offered by the Taxpayers include surgical procedures that entail the insertion of medical implants such as metal plates affixed by screws, catheters, stents, pacemakers, corneal implants/intraocular lenses, and leads, some of which qualify as prosthetic devices as the term is defined in HRS § 237-24.3(7).

Taxpayers also contract with third parties for intensivist services in the course of providing care for critical care patients. These intensivist service providers are GET-licensed taxpayers.

The Taxpayers intend to take the position on periodic and annual GET returns that sales of those items that qualify as prosthetic devices are exempt from GET pursuant to HRS § 237-24.3(7), although a ruling on whether these sales are exempt is not being requested.

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The Taxpayers purchase these medical items and intensivist services from various unrelated third party vendors. Some of the Taxpayers' suppliers have questioned whether the Taxpayers are entitled to furnish valid resale certificates to them under the above circumstances.

Thus, Taxpayers request a ruling as to whether their purchases of the following items constitute sales at wholesale for which furnishing resale certificates is appropriate:

1. Items implanted in the patient during the course of performing surgical operations and which remain in or with the patient after the surgery is completed:
  - a. Indwelling catheters;
  - b. Stents;
  - c. Prostheses (replacement heart valves, artificial organs or limbs);
  - d. Pacemakers;
  - e. AICD's (Automatic Implantable Cardiac Defibrillators, which are implanted units that recognize deadly arrhythmia and then shock the patient when necessary);
  - f. Leads (for implanted electrical equipment such as pacemakers);
  - g. Plates;
  - h. Screws (used to secure plates implanted in patient);
  - i. Corneal implants; and
  - j. Intraocular lenses.
  
2. Medical services for which the Taxpayers act as intermediaries:
  - a. Intensivist services.

**Ruling Requested**

The Taxpayers request a ruling that they are authorized to furnish resale certificates to (1) suppliers of medical items for which the Taxpayers will pay GET at the retail rate upon resale, (2) suppliers of medical items that qualify as prostheses such that the resale of those devices to patients would be GET-exempt retail sales, and (3) intensivist services providers providing services directly to patients.

**Law and Analysis**

Medical Devices:

HRS § 237-4(a)(8) defines "sales at wholesale" to include sales of tangible personal property where (1) the sale is upon the order or request of a licensed seller for the purpose of rendering a service in the course of said licensed seller's service business, (2) the tangible personal property becomes or is used as an identifiable element of the service rendered, and (3)

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the cost of the tangible personal property does not constitute overhead with respect to the licensed seller.

HAR § 18-237-13-2(d)(1) provides that a seller may, when appropriate, take from a purchaser of tangible personal property a resale certificate certifying that the sale is a sale at wholesale. Pursuant to HAR § 18-237-13-2(d)(6), the Director of Taxation has prescribed Form G-17, *Resale Certificate for Goods General Form 1* for this purpose.

Sales to the Taxpayers of items of tangible personal property that will be implanted in patients during the course of performing surgical operations performed by the Taxpayers, and which will remain in or with the patients after surgery, are resold to the patients and qualify as sales at wholesale as the term is defined under HRS § 237-4(a)(8).

The sales to the Taxpayers satisfy each of the three aforementioned requirements under HRS § 237-4(a)(8). The first and third requirements are clearly met. The first requirement is met because sales of the items will be upon the order of the Taxpayers, GET-licensed taxpayers, for the purpose of rendering services associated with the Taxpayers' medical service business. The third requirement is met because the items constitute inventory items, not overhead, to the Taxpayers.

Regarding the second requirement, the Department interprets an item to be an "identifiable element" of the service if the item is not consumed by the service provider and if the item is not incidental to the performance of the service.

In the case of the Taxpayers, the second requirement is met because the surgically implanted items are not consumed by the Taxpayers and remain with the patient even after the surgery. In addition, these items are not incidental to the performance of the surgical operations.

**Intensivist Services**

HRS § 237-4(a)(10)(i) defines "sales at wholesale" to include sales of services to a licensed seller where the service is rendered for the purpose of rendering another service in the course of the licensed seller's service business.

Under the precursor to section 237-4(a)(1), HAR 18-237-13(6)-1 provided that in order to qualify for the 0.5% intermediary services rate, the intermediary must be a "mere conduit." HAR 18-237-13(6)-02 provided that the intermediary services rate applies to gross income received when (1) a service business provides services; (2) upon the request of another service business which acts as an intermediary between the service provider and the ultimate customer; (3) both the service provider and intermediary are GET-licensed taxpayers; (4) there are at least three parties in the transaction (service provider, intermediary, and customer); and (5) the gross income received from the customer by the intermediary is subject to the general excise tax at the retail rate.

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Example 2 of HAR § 18-237-13(6)-4 specifically applied the intermediary services rate in the context of the provision of medical services. In that example, Intermediary contracts with Service Providers to provide medical services to Customers. Customers pay Intermediary who in turn pays the Service Providers. Example 2 provides that in order for Service Providers to be eligible for the intermediary services rate, both Service Providers and Intermediary must be engaged in a service business. The example goes on to state that professional medical services is a service business or calling as defined in HRS § 237-7. These administrative rules, although promulgated under a prior version of section 237-13(6), are persuasive in interpreting the current section 237-4(a)(10)(i).

The Department has prescribed Form G-82, *Certificate for Sales of Services and Amusements which Qualify as Wholesale Transactions*, as the means for establishing the basis for application of the service-to-service wholesale rate. The intermediary should provide a completed Form G-82 to the service provider.

HRS § 237-24.3(7) exempts from GET "[a]mounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual." This exemption from GET is limited to amounts attributable to the actual prescription drugs or prosthetic devices, and is not applicable to any attendant service costs.

Regarding the intensivist services, amounts paid by Taxpayers to third party contractors for provision of those services qualified as intermediary services under prior law, HAR §§ 18-237-13(6)-02 and 18-237-13(6)-04 Example 2, and thus qualify as sales at wholesale as the term is defined under HRS § 237-4(a)(10)(i).

## **Conclusion**

For these reasons, the Department rules that the Taxpayers are authorized to furnish resale certificates (Forms G-17 or G-82, as appropriate) to (1) its suppliers of medical items for which the Taxpayers will pay GET at the retail rate upon resale, (2) its suppliers of medical items that qualify as prostheses such that the resale of those devices to patients would be GET-exempt retail sales, and (3) intensivist services providers for whom the Taxpayers act as intermediaries.

The conclusion reached in this letter is based on our understanding of the facts that you have represented. If it is later determined that our understanding of these facts is not correct, the facts are incomplete, or the facts later change in any material respect, the conclusion in this letter will be modified accordingly. This ruling also may be subject to change due to future amendments to laws, rules, or official Department positions.

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If you have any further questions regarding this matter, please call me at 808-587-5334. Additional information on Hawaii's taxes is available at the Department's website at [www.state.hi.us/tax](http://www.state.hi.us/tax).

Sincerely,

/s/Jacob L. Herlitz

Jacob L. Herlitz  
Administrative Rules Specialist