STREAMLINED SALES AND USE TAX AGREEMENT COMPLIANCE REVIEW AND INTERPRETATIONS COMMITTEE

Interpretive Opinion 2021-XX

This Interpretive Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this XX day of XX, in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc. Mr. Richard Nielsen from Pillsbury Winthrop Shaw Pittman LLP requested the interpretation on June 26, 2020.

(Note: A public meeting was initially held on September 22, 2020, and CRIC referred this issue to the State and Local Advisory Council (SLAC). SLAC formed a workgroup and developed various amendments to the Streamlined Sales and Use Tax Agreement (Agreement), the SSTGB Rules and Procedures and Appendices related to this issue. Those amendments were approved by the Governing Board on May 20, 2021, and this interpretive opinion is based on the Agreement as amended through May 20, 2021.)

Issue:

The issue is whether implanted ECG monitors meet the definition of prosthetic devices contained in the Streamlined Sales and Use Tax Agreement (Agreement).

Background Provided by Mr. Nielsen (Summarized):

Mr. Nielsen's request describes the implanted ECG monitors as follows:

> The RICM (ECG monitor) is a long-term heart monitoring device designed to help a doctor diagnose and treat irregular heartbeats. It is a minimally invasive heart monitor that is just inserted under the skin of the chest in a simple outpatient procedure. It requires no wires or patches on the outside of the body. The battery is designed to last for up to three years. The RICM keeps a patient connected to their doctor with continuous heart monitoring. It monitors the heart' s activity and records an abnormal rhythm in the form of an electrocardiogram (ECG) that is then transmitted to their physician for review. The RICM is used with patients that experience infrequent fainting episodes. The RICM monitors the patient' s heart to help doctors determine whether the unexplained fainting is heart related. The RICM records heart rhythms automatically or when the patient uses the hand-held activator.

Mr. Nielsen was not asking to find the ECG monitor to be (or not be) a prosthetic device, he just wants consistency across the member states as one state classified it as a prosthetic device while another member state did not classify it as a prosthetic device. Both states had adopted the uniform definition of "prosthetic device" contained in the Agreement.

Public Comment: No written public comments were received. During the teleconference on

September 22, 2020, there was a robust discussion on the issue. Following the discussion, CRIC decided to not issue an opinion due to the prior Governing Board action that approved Disclosed Practice 7 and included the item as a "not defined" item. CRIC recommended that SLAC review Disclosed Practice 7 and Appendix L of the SSTGB Rules and Procedures to determine if the taxability of undefined items could be added to Disclosed Practice 7 or provide further clarification of what the phrase "not defined" in Appendix L meant related to these items. SLAC was directed to review and develop the issue and bring it back to a future meeting for discussion and resolution.

Recommendation:
The Compliance Review and Interpretations Committee (CRIC) submits to the Governing Board a recommendation that the interpretation proposed by the requestor not be accepted and member states be allowed to continue to have differing classifications of items in Appendix L that are identified as "not classified by SSTGB".

Rationale:
Appendix C of the Agreement defines several healthcare related terms, including prosthetic device, durable medical equipment and mobility enhancing equipment. Appendix L was created to provide a list of medical items and the classification of those items within the various terms defined in the Agreement. It was agreed upon by the states and the business community that if the states could not come to a consensus with regard to a particular item it will be designated as "Not Classified by SSTGB" and states can then choose to include or exclude the item from a defined term in the Agreement. The states and the business community recognized that this will not result in absolute uniformity. Disclosed Practice 7 was developed as a means for member states to identify whether they include the "Not Classified by SSTGB" items within an SST defined term or a specific state statutory definition and this helps the business community determine the proper taxability of these items in each of the states.

CRIC recommended that SLAC review Disclosed Practice 7 to determine if the taxability of unclassified items should be added or to provide further clarification related to these items. SLAC was directed to review and develop the issue and bring it back to a future meeting for discussion and resolution. During the May 20, 2021, Governing Board meeting, amendments to Agreement Section 327 and Appendix E and SSTGB Rules and Procedures Appendix L were approved which clarified that differing interpretations amongst the member states of items not classified as a defined healthcare term are allowable. A member state may classify one or more of the "Not Classified by SSTGB" products found in the list in Appendix L under one of the SSUTA healthcare defined terms or a state specific definition.

Participating Committee Members: