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DEPARTMENT OF TREASURY  
LANSING

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**LETTER RULING 2017-1**

**LR 2017-1. Sales and Use Tax treatment of transfers of human tissues used for research and training purposes.**

You are a non-transplantable tissue bank that provides human tissue specimens to clients for medical research and training purposes. You have documented that all transactional charges, including those related to services and tangible personal property, are separately stated on an itemized invoice. Based upon these documents, you ask whether the transfer of human tissue specimens for medical research and training purposes is subject to the tax imposed by the Michigan General Sales Tax Act, MCL 205.51 *et seq.*, or Michigan Use Tax Act, MCL 205.91, *et seq.*

**Summary of law.** The Michigan General Sales Tax Act and the Michigan Use Tax Act are complementary tax statutes that generally levy a 6% tax on the sale or use of tangible personal property. Tangible personal property is defined, in relevant part, as “personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.” MCL 205.51a(q); MCL 205.92(k). Where the sale/use of tangible personal property is subject to tax, tax is measured upon the “total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold.” MCL 205.51(1)(d); MCL 205.92(f). In contrast to tangible personal property transactions, services are not generally subject to tax under either act.

**Transfers of “human organs” are not subject to tax in Michigan.** The Michigan Public Health Code criminalizes the outright sale of any “human organ.” MCL 333.10204. A “human organ” is broadly defined to include all or any portion of the “human kidney, liver, heart, lung, pancreas, intestine, bone marrow, cornea, eye, bone, skin, cartilage, dura mater, ligaments, tendons, fascia pituitary gland, and middle ear structures.” MCL 333.10204(5)(a). Where a human organ is transferred, the Public Health Code only allows consideration to be exchanged for various services such as “removal, transportation, implementation, processing, preservation, quality control, and storage.” MCL 333.10204(5)(b). In effect, Michigan law characterizes a legal transfer of a human organ as a pure service transaction. Consistent with that characterization, there is no sales or use tax due on such transfers.

**Certain non-transplantable tissues are subject to tax on the sale price.** While “human organ” is broadly defined, the definition does not include all human tissue specimens. Indeed, the definition of “human organ” excludes “whole blood, blood plasma, blood products, blood derivatives, other self-replicating body fluids, or human hair.” MCL 333.10204(5)(b). Other regulations within the Public Health Code only apply to tissues that are intended for use in human transplantation, injection, or transfusion into a human body and do not apply to human tissue specimens used solely for medical research and training purposes. MCL 333.9121(2); MCL 333.10116. Related federal provisions similarly only restrict tissue transfers that are intended for

human transplantation. See, e.g., 42 USC 274e(a). In this regard, there are no apparent transfer restrictions regarding non-transplantable tissues used for research and training where those tissues are not “human organs.” Because such tissues constitute tangible personal property under the plain language of the statute, the transfer of these tissues is subject to Michigan sales and use tax. MCL 205.51a(q); MCL 205.92(k). The tax is measured upon the total amount of consideration for the property as determined by reference to the list price on the customer invoice. Cf. *Ameritech Publishing, Inc. v Dep’t of Treasury*, 281 Mich App 132 (2008).

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