

Date Issued: February 25, 2013  
Georgia Letter Ruling: LR SUT-2013-18  
Topic: Medical & Drugs

This letter is in response to your request for guidance on the application of Georgia sales and use tax to storage of prescription drug samples in Georgia and the giveaway of such samples to physicians, clinics and hospitals located within and outside Georgia.

### **Facts**

Taxpayer (“the Company”) is a pharmaceutical drug manufacturer. As part of its marketing efforts, the Company’s sales employees and third-party sales representatives give away prescription drug samples to physicians, clinics, and hospitals to supply to their patients. Prescription drug samples are never sold to third parties by the Company; these samples are only given away to physicians, clinics, and hospitals. The packaging of prescription drug samples is distinct from the packaging for prescription drugs for sale to wholesalers and indicates that the sample is not for resale. The Company owns and operates a warehouse in Georgia, which is currently used for the storage and shipment of prescription drugs for sale.

The Company would like to understand the use tax treatment when the Company gives away prescription drug samples from its warehouse in the State of Georgia. The recipients are located both in Georgia and outside of Georgia.

### **Issue**

Is the Company required to accrue and remit use tax in Georgia when it gives away prescription drug samples to physicians, clinics, hospitals or other persons located within and outside Georgia?

### **Analysis**

Georgia levies and imposes sales and use tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on the services described in this article.<sup>1</sup> Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state, the owner or user of the property shall be a dealer and shall be liable for use tax.<sup>2</sup> “Use” includes the exercise of any ownership rights over tangible personal property, except a retail sale in the regular course of business.<sup>3</sup>

Georgia law provides an exemption from sales and use tax for “[t]he sale or use of drugs which are lawfully dispensable only by prescription for the treatment of natural persons. . . .”<sup>4</sup> Ga. Comp. R. & Regs. 560-12-2-.30(3)(a) reiterates that the sale or use of drugs that are lawfully dispensable only by prescription for the treatment of natural persons is exempt from Georgia sales and use tax. This exemption applies to all purchasers including but not limited to individual consumers, hospitals, clinics, and medical practice groups.

The term “drug” is defined as “a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than ‘food and food ingredients,’ ‘dietary supplements,’ or ‘alcoholic beverages’ recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or supplement to any of them; intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or intended to affect the structure or any function of the body.”<sup>5</sup> For sales and use tax purposes, the term “drug” shall not include over-the-counter drugs or tobacco.<sup>6</sup> “Prescription” means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.<sup>7</sup>

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<sup>1</sup> O.C.G.A. § 48-8-30(a).

<sup>2</sup> O.C.G.A. § 48-8-30(c).

<sup>3</sup> O.C.G.A. § 48-8-2(40).

<sup>4</sup> O.C.G.A. § 48-8-3(47)(A)(i).

<sup>5</sup> O.C.G.A. § 48-8-2(14).

<sup>6</sup> O.C.G.A. § 48-8-3(47)(B)(i).

<sup>7</sup> O.C.G.A. § 48-8-2(28).

### **Ruling**

The exemption in O.C.G.A. § 48-8-3(47) applies to both the sale *and use* of drugs that are lawfully dispensable only by prescription for the treatment of natural persons. “Use” includes the exercise of *any ownership rights* over tangible personal property (except a retail sale in the regular course of business) including the storage and distribution of such property. Thus, the Company’s storage and distribution of samples of drugs that are lawfully dispensable only by prescription for the treatment of natural persons, are exempt from Georgia sales and use tax. By this ruling, the Department of Revenue is not confirming that any of the Company’s drug samples are in fact lawfully dispensable only by prescription for the treatment of natural persons, but uses of any such drugs are within the scope of the exemption contained in O.C.G.A. § 48-8-3(47).

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, and taxpayer in question. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the Statutes or Rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this response.