

Date Issued: November 10, 2014
Georgia Letter Ruling: LR SUT 2014-17
Topic: Medical

This letter is in response to your request for guidance on the application of Georgia sales and use tax to a cancer treatment therapy system.

Facts

Taxpayer leases cancer therapy systems to patients. Neither Taxpayer nor the patient's physician utilizes the system to provide in-home medical services.

The ongoing care of the patient and the medical assessments are conducted by the treating physician. All medical questions are referred to the treating physician. Under the service agreement the fee is divided into 2 components:

- Monthly fee for access to and use of the treatment; and
- The price paid for the purchase of the supplies used by the Patient.

Taxpayer bills the Patient's 3rd party insurance provider, managed care company or in some cases, the patient directly. If a patient decides to discontinue the therapy they return the equipment and any remaining supplies to Taxpayer. Taxpayer includes only one charge on the invoice for both the main equipment and the supplies.

Issue

Is Taxpayer's therapy system transaction described above subject to Georgia sales and use tax?

Analysis

All retail purchases and sales of tangible personal property are taxable in Georgia unless provided for otherwise.¹ Tax is levied and imposed upon the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain services that occur in this state.² "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale of tangible personal property or certain services.³ "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.⁴ "Lease or rental" does not include the transfer of tangible personal property along with an operator for a fixed or indeterminate period of time when the operator is necessary for the equipment to perform as designed.⁵ In the present case, after training, the patient self-administers treatments and the patient's physician does not utilize the system to provide in-home medical services. Consequently, the patient has sufficient use, possession and control of the equipment for the transaction to be considered a lease or rental. The transactions for the supplies are purchases since the patient obtains full title and possession of the arrays.

Code Section 48-8-3(54) provides an exemption from sales and use tax for "[t]he sale or use of any durable medical equipment that is sold or used pursuant to a prescription or prosthetic device that is sold or used pursuant to a prescription". "Durable medical equipment" means equipment including repair and replacement parts for the same, but does not include mobility enhancing equipment, which:

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Generally is not useful to a person in the absence of illness or injury; and
- (D) Is not worn in or on the body.⁶

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(b).

² O.C.G.A. § 48-8-30.

³ O.C.G.A. § 48-8-2(31).

⁴ O.C.G.A. § 48-8-2(17).

⁵ O.C.G.A. § 48-8-2(17)(C).

⁶ O.C.G.A. § 48-8-2(15).

The Taxpayers' equipment satisfies all of the listed criteria and thus is considered to be "durable medical equipment". The supplies can withstand repeated use (albeit on a limited basis, as they are replaced two or three times per week), are primarily and customarily used to serve a medical purpose, and are generally not useful to a person in the absence of illness or injury. The supplies are part of the larger piece of equipment, which is not worn in or on the body. The supplies are effectively replacement parts of the main equipment, and since "durable medical equipment" includes repair and replacement parts, the supplies qualify for the exemption in O.C.G.A. § 48-8-3(54) just as the main equipment qualifies for the exemption in the first instance.

It should be noted that if at any time a service provider uses, possesses or controls an item of durable medical equipment in providing a medical service, the item is not considered to have been sold or used pursuant to a prescription and the service provider is liable for sales or use tax on the service provider's cost price of the item.⁷

Ruling

Since the Taxpayer's main equipment and supplies are durable medical equipment Georgia sales and use tax does not apply to the lease or rental of such equipment to a patient to whom a prescription for the equipment has been issued. The Department considers the transaction described above to be a lease or rental, and thus Georgia sales and use tax is not due on the lease as long as the lessee has been issued a prescription for therapy. The exemption for durable medical equipment also applies to repair and replacement parts, and since the Department considers the supplies to be part of and replacement parts for the main equipment, the sale of the supplies is also exempt from Georgia sales and use tax when the sale is to a patient to whom a prescription for the therapy has been issued and who is in fact leasing the main equipment. Thus, since there is only one charge in this case for both the main equipment and the supplies, this one charge is exempt from tax (again, as long as the patient/customer has a prescription for the therapy).

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances 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.

⁷ Ga. Comp. R. & Regs. r. 560-12-2-.30(4)(c).