

Date Issued: June 19, 2015
Georgia Letter Ruling: LR SUT-2015-09
Topic: Medical

This letter is in response to your request for guidance on the application of Georgia sales and use tax to various products sold by Taxpayer.

Facts as presented by Taxpayer

Taxpayer requests guidance on the taxability of the following items:

- (a) walk-in bathroom tubs (with and without lifts);
- (b) in home wheelchair mobility lifts (for transporting person and wheelchair up stairs); and
- (c) modular ramps (not portable, but not permanently affixed).

All products are sold directly to consumers. A prescription by a licensed medical professional may be obtained but is not required. Sales may be covered by Medicare or Medicaid. The products would be delivered to an in-state warehouse and then delivered directly to the consumer either by Taxpayer's representative or by common carrier. Title passes at the point of delivery to the consumer.

Issue

Are the walk-in bathtubs, in home wheelchair mobility lifts, and modular ramps sold by Taxpayer subject to Georgia sales and use tax?

Analysis

All retail purchases and sales of tangible personal property are taxable 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 services described in this article that occur in this state.² "Retail sale" or a "sale at retail" means a sale, lease or rental for any purpose other than for resale.³ "Sale" means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration.⁴

Durable medical equipment and prosthetic devices that are sold pursuant to a prescription are exempt from sales and use tax.⁵ "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(33)(A).

⁵ O.C.G.A. § 48-8-3(54).

⁶ O.C.G.A. § 48-8-2(15).

“Prosthetic device” means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to:

- (A) Artificially replace a missing portion of the body;
- (B) Prevent or correct physical deformity or malfunction; or
- (C) Support a weak or deformed portion of the body.

Sales of “mobility enhancing equipment” are exempt from Georgia sales and use tax if the item is prescribed by a physician.⁷ “Mobility enhancing equipment” means equipment including repair and replacement parts to the same, but does not include durable medical equipment, which:

- (A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
- (B) Is not generally used by persons with normal mobility; and
- (C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.⁸

“Mobility enhancing equipment” includes lift chairs,⁹ patient lifts¹⁰, and ramps.¹¹

Based on the definitions above, the Department considers the in home wheelchair mobility lifts, and modular ramps sold by Taxpayer to fall within the definition of mobility enhancing equipment. These items are designed for and intended to be used by individuals who do not have normal mobility, and more specifically, these items are primarily and customarily used by people who do not have normal mobility to move from one place to another.

However, the walk-in bathtubs become fixtures to real property, and as such are not included within the scope of the exemptions discussed above. The tubs are clearly not prosthetic devices. Thus, the potentially relevant exemptions are the durable medical equipment exemption and the mobility enhancing equipment exemption. Both of these exemptions use the term “equipment”, and the Department has historically interpreted this term as referring to equipment that retains its identity as tangible personal property after installation.¹² In this case, the walk-in tubs do not retain their character/identity as tangible personal property, but instead become fixtures to the realty and, thus, are not exempt from tax as durable medical equipment or mobility enhancing equipment.

Ruling

The wheelchair mobility lifts, and modular ramps are properly categorized as mobility enhancing equipment, and are therefore exempt from Georgia sales when prescribed by a physician. In case of audit, Taxpayer should maintain appropriate documentation to show that any items sold without tax were in fact prescribed by a physician. The walk-in bathtubs are subject to tax as these items are considered fixtures, and not equipment; thus, they are not exempt as durable medical equipment or mobility enhancing equipment.

⁷ O.C.G.A. § 48-8-3(72).

⁸ O.C.G.A. § 48-8-2(20).

⁹ Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(c)(3)(vii).

¹⁰ Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(c)(3)(viii).

¹¹ Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(c)(3)(xiii).

¹² See GA: Ga. Comp. R. & Regs. r. 560-12-2-.62 (addressing manufacturing machinery and equipment and providing that real property includes “fixtures”, and “equipment” excludes real property) and GA: Ga. Comp. R. & Regs. r. 560-12-2-.03 (addressing agriculture exemptions and providing that real property includes “fixtures”, and “machinery and equipment” excludes real property).

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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.