

Date Issued: September 22, 2015  
Georgia Letter Ruling: LR SUT-2015-13  
Topic: Medical Devices-Prosthetics

This letter is in response to your request for guidance on the application of Georgia sales and use tax to sales of custom designed and fabricated devices to orthodontists and dentists for use by their individual patients.

### **Facts as Presented by Taxpayer**

Taxpayer designs, manufacturers, and markets a dental appliance which corrects misaligned teeth. The appliance is regulated by the Federal Drug Administration as a Class II medical device and may only be used or sold by a prescribing orthodontist or dentist. Taxpayer has asked for guidance as to the appropriate application of tax to its sales of appliances made to orthodontists and dentists ("dentist(s)").

### **Issue**

Are Taxpayer's sales of appliances made to dentists subject to sales and use tax in Georgia?

### **Analysis**

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property, certain enumerated services, and utilities. Every purchaser of tangible personal property at retail in this state shall be liable for sales and use tax on the sales price of the purchase.<sup>1</sup>

#### *Prosthetic Devices*

Georgia law provides a sales and use tax exemption for the sale or use of any prosthetic device that is sold to a natural person pursuant to a prescription.<sup>2</sup>

The following definitions are relevant to this discussion:

- "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. Georgia Code provides a sales and use tax exemption for the sale or use of prosthetic devices for the treatment of natural persons that can be used or sold by prescription only.<sup>3</sup>
- "Natural person" means an individual human being.
- "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. An order issued by a licensed dentist is a prescription.<sup>4</sup>

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<sup>1</sup> O.C.G.A. §§ 48-8-1; 48-8-2(31)(A); 48-8-30.

<sup>2</sup> O.C.G.A. § 48-8-3(54); Ga. Comp. R. & Regs. r. 560-12-2-.30.

<sup>3</sup> O.C.G.A. § 48-8-3(54); Ga. Comp. R. & Regs. r. 560-12-2-.30.

<sup>4</sup> O.C.G.A. § 48-8-2(28).

If a prosthetic device can be sold or used only by prescription under federal or state law, and title and possession will be permanently transferred to a natural person (i.e., the patient) having a prescription for the device, the dentist transferring the device to the patient may purchase the item tax exempt without furnishing form ST-5 (Sales and Use Tax Certificate of Exemption) to the supplier.<sup>5</sup> The purchasing dentist may then transfer the device tax exempt to the patient to whom a prescription for the device is issued.

#### *Record Keeping*

Both the supplier and the dentist must maintain suitable records to support the sale and use of a prescription only prosthetic device in a manner consistent with the exemption requirements.<sup>6</sup> Regulations require that the following records be kept:

- a daily record of all cash and credit sales, including any type of financing or installment plan in use, and amounts of taxes collected;
- a record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders;
- a record of all deductions and exemptions claimed in filing sales or use tax returns, including exemption and resale certificates;
- a record of all tangible personal property used or consumed in the conduct of the business; and
- a true and complete inventory of the stock on hand and its value, taken at least once yearly.<sup>7</sup>

Records must be maintained for no less than three years.<sup>8</sup>

#### **Ruling**

The appliance produced and sold by Taxpayer is worn in an individual's mouth for the correction of misaligned teeth and thus is a prosthetic device for sales and use tax purposes. The appliance may be sold or used only pursuant to a prescription. Because Georgia provides a sales and use tax exemption for the sale or use of a prosthetic device that may only be obtained by prescription, the tax does not apply to either the sale or use of the appliance. A dentist may purchase the appliance exempt from the tax without providing an ST-5 Certificate of Exemption to Taxpayer. The dentist may then transfer the appliance to a patient having a prescription without incurring a sales or use tax liability.

Both Taxpayer and the dentist must maintain suitable records to support the sale and use of the appliance in a manner consistent with the exemption requirements. Records must be maintained for a period of no less than three years.

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.

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<sup>5</sup> Ga. Comp. R. & Regs. r. 560-12-2-.30(5)(a).

<sup>6</sup> O.C.G.A. § 48-8-52; Ga. Comp. R. & Regs. r. 560-12-1-.15.

<sup>7</sup> Ga. Comp. R. & Regs. r. 560-12-1-.23(1)(a) to Ga. Comp. R. & Regs. r. 560-12-1-.23(1)(e).

<sup>8</sup> O.C.G.A. §§ 48-8-52; 48-8-53.