

Date Issued: May 16, 2016
Georgia Letter Ruling: LR SUT-2016-12
Topic: Medical – Prosthetic

This letter is in response to your request for guidance on the application of Georgia sales and use tax to a certain product sold by [Redacted] (“Taxpayer”).

Facts as Presented by Taxpayer

Taxpayer sells [Redacted] (“System”), a device designed to correct a physical deformity in the male urinary tract known as Benign Prostatic Hyperplasia (“BPH”). BPH involves hyperplasia (an increase in the number of cells) of certain cells in the prostate gland that surrounds the urethra. This increase in cells results in the formation of large nodules in the transition zone of the prostate. When sufficiently large, these nodules deform the urethra and increase resistance to the flow of urine from the bladder.

The System corrects this deformity with permanent adjustable transprostatic implants (“implant”) placed by a health care provider during a cystourethroscopy, a surgical procedure. Each implant is sold to a hospital or medical facility in its own sterile, individual housing, which is designed to couple to a urethroscope. The housing is single-use; it is not reloadable or reusable.

Together, the implant and housing form the System. The System can only be used pursuant to a prescription. The implant and housing are sold together as an indivisible unit, and the urethroscope is not included in the System. The Food & Drug Administration cleared the implant and the housing to be used together as an indivisible unit.

Issue

Are Taxpayer’s sales of the System subject to sales and use tax?

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.¹ The Georgia Code provides an exemption from the tax for the sale or use of a prosthetic device that is sold or used pursuant to a prescription.²

A “prosthetic device” is a replacement, corrective, or supportive device – including repair and replacement parts for the device – worn on or in the body to either artificially replace a missing portion of the body, or prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body.³

If a prosthetic device can be sold or used only pursuant to a prescription under federal or state law, and title and possession will be permanently transferred to the person to whom a prescription for the device is issued, the entity (including hospitals, clinics, and medical practice groups) transferring the device may purchase the item tax exempt without furnishing form ST-5 (Sales and Use Tax Certificate of Exemption). The entity may then transfer the device tax exempt to the person to whom a prescription for the device is issued.⁴

The implant portion of Taxpayer’s System is a permanent implant in the body, and it is intended to correct a deformity in the urethra and a malfunctioning urinary system. Consequently, the implant meets the definition of prosthetic device. Additionally, since the System can be sold or used only pursuant to a prescription and since the implant transfer is permanent, the implant is a tax-exempt prosthetic device.

¹ O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), 48-8-30(a).

² O.C.G.A. § 48-8-3(54).

³ O.C.G.A. § 48-8-2(29); Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(h)(1).

⁴ Ga. Comp. R. & Regs. r. 560-12-2-.30(5)(a).

In addition to the implant, the System includes housing for the implant. This part contains handles and features to transfer and place the implant during surgery. The housing does not remain in or on the body, so it, by itself, is not a prosthetic device. The housing is single-use and necessary for proper placement of the implant, but it is otherwise valueless when considered on their own. Such an item represents an inconsequential element of the System as a whole. Accordingly, the housing's inclusion in the System does not cause the System, in part or in whole, to be subject to tax.⁵

Ruling

Taxpayer's prescription-only System consists of a nontaxable prosthetic device and a taxable tool necessary for the proper use of the device. The sales price of the taxable tool included in each System is inconsequential or de minimis relative to the value of System. As such, Taxpayer's sales of this System are not subject to the tax.

The opinions expressed in this ruling is 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, this ruling may become invalid. Subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this ruling is based may subject similar future transactions to a different tax treatment than that expressed in this ruling.

⁵ Although not directly on point, the Georgia General Assembly has implied that sales tax does not apply to inconsequential or de minimis elements of a nontaxable transaction even though such elements would be taxable if sold separately. O.C.G.A. § 48-8-3(22) ("The sales and use taxes levied or imposed by this article shall not apply to . . . [p]rofessional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made."); O.C.G.A. § 48-8-2(3)(D)(iii) ("A transaction that otherwise meets the definition of bundled transaction as provided under this paragraph shall not be a bundled transaction if such transaction is . . . [a] transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. As used in this subparagraph, the term 'de minimis' means the seller's purchase price or sales price of the taxable product is 10 percent or less of the total purchase price or sales price of the bundled products.").