

Date Issued: July 15, 2016  
Georgia Letter Ruling: LR SUT-2016-16  
Topic: Medical Devices

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

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

Taxpayer is the provider of a device called [Redacted] (“Device”). The Device is designed to correct snoring and obstructive sleep apnea. The Device is worn temporarily while it supports and corrects the issue.

Each Device is custom fit for the patient by a dentist in accordance with a prescription. After obtaining a prescription, a patient will go to a dentist, who will make a custom-fit Device with the help of an impression of the patient’s mouth. The Device uses the patient’s teeth and facial structure to support the movement of the jaw thus allowing the airway to stay open.

### **Issue**

Are Taxpayer’s sales of the Device 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.<sup>1</sup> 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>

A prosthetic device is a replacement, corrective, or supportive device (including repair and replacement parts for the same) worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body.<sup>3</sup>

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 entity 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>4</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>5</sup>

The Device is worn in an individual’s mouth for the support of soft tissue and correction of disruptive jaw movement and thus is a prosthetic device for sales and use tax purposes. The Device is sold only pursuant to a prescription. Because Georgia provides a sales and use tax exemption for the sale or use of a prosthetic device that only can be obtained by prescription, the tax does not apply to either the sale or use of the Device.

---

<sup>1</sup> O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 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> Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(h).

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

<sup>5</sup> O.C.G.A. § 48-8-2(28).

**Ruling**

The Device is worn in the body to support proper jaw movement and breathing, and thus is a prosthetic device. In addition, the Device may be lawfully sold and used only pursuant to a prescription, and title and possession will ultimately be permanently passed a natural person (the patient). As a prescription-only prosthetic device that will be permanently transferred to a patient, the sale of the Device is not subject to sales and use tax. A dentist may purchase the Device exempt from the tax without providing an ST-5 Certificate of Exemption to Taxpayer. Without incurring a sales or use tax liability, the dentist may then transfer the Device to a patient having a prescription for the Device.

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, 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 different tax treatment than that expressed in this ruling.