

Georgia Letter Ruling Number: LR SUT-2017-13  
Topic: Durable Medical Equipment  
Date Issued: September 5, 2017

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

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

Taxpayer sells prescription-only continuous glucose monitoring (“CGM”) systems for use in diabetes management. The system tracks a patient’s glucose throughout the day and night, notifying the patient of highs and lows so the patient can take action.<sup>1</sup>

The CGM system includes:

- A disposable sensor that is inserted under the skin;
- A transmitter that connects to the sensor and wirelessly transmits glucose readings; and
- A handheld receiver that displays glucose readings.

The disposable sensors are approved to be used for seven continuous days, and the transmitter is reusable and has either a three-month life or a six-month life depending on the generation of the product. According to Taxpayer, the sensor and transmitter are considered to be worn in or on the body. In the latest version of the CGM system, the transmitter wirelessly transmits glucose readings directly to the patient’s smartphone rather than to a specific receiving device. A mobile application for smartphones is provided free of charge for use with the CGM system.<sup>2</sup>

The CGM system is primarily sold as individually priced components to patients; bundles are sold to doctors and hospitals. Payment is received directly from customers who use the products, as well as from distributors, hospitals, and insurance companies. Sales to distributors are for resale; sales to hospitals are either for resale, or for the hospital’s own use. Pursuant to the United States Food and Drug Administration regulations, sales to individual patients require a prescription and/or statement of medical necessity.

### **Issue**

Is the CGM system or any of its components – including its repair and replacement parts – exempt from 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.<sup>3</sup> The tax does not apply to the sale or use of any durable medical equipment that is sold or used pursuant to a prescription<sup>4</sup>, nor does it apply to sales of blood glucose level measuring strips dispensed without a prescription.<sup>5</sup>

As used in the above exemption, “durable medical equipment” means equipment - including repair and replacement parts for the same - that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body.<sup>6</sup>

Durable medical equipment may be purchased tax exempt for resale only if title and possession will be permanently

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<sup>1</sup> “How CGM Works,” *Taxpayers Website*, [http://\[Redacted\]](http://[Redacted]), accessed December 12, 2016.

<sup>2</sup> This ruling considers the application of sales and use tax exemptions to the CGM system and its individual components. Alternative receivers, such as smartphones with mobile applications are not covered by this letter.

<sup>3</sup> O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 48-8-30(a).

<sup>4</sup> O.C.G.A. § 48-8-3(54).

<sup>5</sup> O.C.G.A. § 48-8-3(50).

<sup>6</sup> O.C.G.A. § 48-8-2(15); Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(b)(1).

transferred to a natural person to whom a prescription for the equipment is issued. Durable medical equipment that can be sold or used only pursuant to a prescription under federal or state law may be purchased tax exempt for resale pursuant to this subparagraph without furnishing form ST-5 (Sales and Use Tax Certificate of Exemption). Then, the durable medical equipment may be transferred tax exempt to a natural person to whom a prescription for the equipment is issued. On the other hand, if a service provider uses, possesses, or controls an item of durable medical equipment at any time in providing a medical service (including but not limited to diagnostic, treatment, or rehabilitative services), 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.<sup>7</sup>

By Regulation, blood glucose monitors are examples of durable medical equipment, which are exempt if sold or used pursuant to a prescription.<sup>8</sup> In addition, the Department is guided by definitions and classifications in the Streamlined Sales and Use Tax Agreement ("Streamlined Agreement"), which provides a simplified system for the application of sales and use tax.<sup>9</sup> In Appendix L of the Streamlined Agreement, glucose meters are described as blood sugar monitors and classified as durable medical equipment.<sup>10</sup>

To determine whether the CGM system is durable medical equipment, the Department considers the system as a whole as well as each of its components. Taxpayer's CGM system is designed for continuous use to monitor and track levels of blood glucose in adults with diabetes. Not only does the system serve this medical purpose, but also the system is generally only useful to a person with diabetes or other people whose bodies do not otherwise sense when blood sugar levels are too high or too low. While the entire system meets the first three prongs of the definition for durable medical equipment, the receiver is the only component not worn in or on the body. As Taxpayer conceded, the sensor and transmitter seemingly fail the forth prong of the definition since they are worn in or on the body.

Although the sensor and transmitter may fall outside the definition of durable medical equipment, the system may be exempt if these components qualify for a different exemption, such as the exemption for blood glucose level measuring strips dispensed without a prescription.

In general, blood glucose is tested by a patient pricking his finger with a lancet to get a drop of blood, placing the blood on a disposable test strip, and inserting the test strip into a meter for reading. The test strip contains chemicals that react with glucose, and the meter measures that reaction.<sup>11</sup> Here, akin to a blood glucose level measuring strip, the sensor and transmitter are disposable items that react with bodily fluids to produce indicators that a meter converts to a blood glucose reading. In this CGM system, the sensor and transmitter seem to be the operational equivalent of a blood glucose level measuring strip because the sensor and transmitter are located just underneath the skin and react with the body in a manner comparable to how a strip reacts to blood after a finger prick.

Since the Department deems the sensor and transmitter to be blood glucose level measuring strips, the remaining phrase in the exemption, "without a prescription," must be reviewed. When an exemption is limited to items dispensed or dispensable by prescription, such a phrase adds an additional element to the exemption that must be strictly construed.<sup>12</sup> But it is illogical to conclude that the legislature intended to exclude otherwise exempt blood glucose level measuring strips simply when dispensed by order of a medical professional. As explained in the applicable Regulation, the exemption for sales of blood measuring strips applies to all purchasers including but not limited to individual consumers, hospitals, clinics, and medical practice groups.<sup>13</sup> In view of the language of the law and Regulation, the clear intention of the exemption is that the sale or use of blood glucose level measuring strips is exempt from the tax regardless of whether such items are ordered by a doctor for a specific patient, maintained by a medical practice, or used by an individual consumer. Although this CGM system is dispensable only with a prescription, the

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<sup>7</sup> Ga. Comp. R. & Regs. r. 560-12-2-.30(4).

<sup>8</sup> Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(b)(2).

<sup>9</sup> O.C.G.A. § 48-8-160, *et seq.*

<sup>10</sup> Appendix L, Rules to the Streamlined Sales and Use Tax Agreement (2006).

<sup>11</sup> "Blood Glucose Monitoring Devices," *U.S. Food & Drug Administration*, <http://www.fda.gov/medicaldevices/productsandmedicalprocedures/InVitroDiagnostics/GlucoseTestingDevices/default.htm>, accessed January 11, 2017.

<sup>12</sup> Ga. Comp. R. & Regs. r. 560-12-1-.18.

<sup>13</sup> Ga. Comp. R. & Regs. r. 560-12-2-.30(7)(d).

system's prescription requirement is an additional, but not disqualifying, attribute.

**Ruling**

Taxpayer sells a prescription-only continuous glucose monitoring system that includes a sensor, transmitter, and receiver. The system also uses refills of the sensor and transmitter. Generally, individually priced components are sold to patients, but bundles are sold to doctors and hospitals. All parts of the system are pertinent components of a unit that operates as blood glucose level measuring strips and a blood glucose monitor.

Based on the description provided by Taxpayer, the receiver is durable medical equipment. Consequently, as long as title and possession will be permanently transferred to a natural person to whom a prescription for the equipment is issued, third parties may purchase the receivers tax exempt for resale and then transfer tax exempt the equipment to the natural person to whom a prescription for the equipment is issued.

The Department considers the sensor and transmitter (and replacements thereof) to fall within the exemption for blood glucose level measuring strips and, thus, to be exempt from sales and use tax regardless of the purchaser.

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.