

Georgia Letter Ruling: LR SUT-2017-08  
Dated: March 28, 2017  
Topic: Durable Medical Equipment

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

### **Facts Presented by Taxpayer**

Taxpayer is a mattress and specialty bedding retailer. In addition to selling traditional beds and flat mattresses, Taxpayer sells a variety of adjustable beds and mattresses for customers with specific needs. Some of the features of these adjustable beds include the following:

- Head tilt
- Foot elevation
- Massaging effects
- Pre-programmed anti-snore position
- Safety stop for adjustment features
- Adjustable height to elevate or lower the entire bed

All of the adjustable beds can accommodate side rails and wheels as needed by the customer. Generally, an adjustable bed requires a special mattress so that the bed functions as intended. On occasion, individual customers will purchase an adjustable bed and accompanying mattress pursuant to a prescription from a licensed practitioner.

### **Issue**

Is Taxpayer required to collect sales and use tax when an adjustable bed or mattress is sold to an individual customer pursuant to a prescription from a licensed practitioner?

### **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 and on certain services.<sup>1</sup> O.C.G.A. § 48-8-3 provides a specific exemption for the sale or use of any durable medical equipment that is sold to an individual (i.e., a natural person) pursuant to a prescription.<sup>2</sup> This exemption is not available to medical service providers.<sup>3</sup> Georgia law defines “durable medical equipment” as equipment 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, is not worn in or on the body, and is not mobility enhancing equipment.<sup>4</sup>

By Regulation, hospital beds, mattresses, and bedding-related attachments are examples of durable medical equipment, but the Regulation does not define the term “hospital bed.”<sup>5</sup> Georgia entered the Streamlined Sales and Use Tax Agreement (“Streamlined Agreement”) to create a simplified system for the application of sales and use tax.<sup>6</sup> Thus, the Department is generally guided by definitions and classifications in the Streamlined Agreement. In Appendix L of the Streamlined Agreement, a “hospital bed” is defined as “a *single* bed with a frame in 3 sections so the head middle or foot can be raised as required,” and it is classified as durable medical equipment.<sup>7</sup> Accordingly, the Department abides by the Streamlined Agreement: the bed with a frame in three sections for elevation of the head,

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

<sup>2</sup> O.C.G.A. § 48-8-3(54); Ga. Comp. R. & Regs. r. 560-12-2-.30(4). “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. O.C.G.A. § 48-8-2(28).

<sup>3</sup> Ga. Comp. R. & Regs. r. 560-12-2-.30(4).

<sup>4</sup> O.C.G.A. § 48-8-2(15); Ga. Comp. R. & Regs. r. 560-12-2-.30(2)(b)(1).

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

<sup>6</sup> O.C.G.A. § 48-8-160, *et seq.*

<sup>7</sup> Appendix L, Rules to the Streamlined Sales and Use Tax Agreement (2006) (emphasis added).

foot, or middle is eligible for the durable medical equipment exemption. Likewise, if such a bed requires a special mattress to ensure that it functions as intended, the mattress is considered part of the equipment.

Taxpayer sells beds that are larger or more adjustable than those defined as “hospital beds” by the Streamlined Agreement. In considering the applicability of the durable medical equipment exemption to those products, each bed must be reviewed to determine whether it is durable medical equipment.<sup>8</sup> Typically, adjustable beds are durable medical equipment if they are functionally equivalent to “hospital beds” as defined in the Streamlined Agreement. That is, since beds with three adjustable sections are primarily and customarily used for a medical purpose, it follows that beds with additional sections for more tailored adjustment serve the same purpose. As indicated by the Streamlined Agreement, the adjustment features that define a hospital bed (and distinguish it from a traditional bed) would not be useful to an individual that does not have an ailment alleviated by such a bed.

As a general rule, O.C.G.A. §48-8-38 imposes a good faith requirement on sellers of tangible personal property who make sales without collecting sales and use tax. While this provision only expressly addresses a dealer’s obligation to exercise good faith when accepting resale or exemption certificates, the Department expects all dealers to exercise good faith when making any sale of tangible personal property without collecting tax. Dealers must maintain records to support all purchases and sales (including documentation to support sales made without the collection of tax) for a period of no less than three years.<sup>9</sup>

### **Ruling**

A single bed with a frame in three sections so the head, middle, or foot can be raised is durable medical equipment. Moreover, beds that have at least three sections to raise the head, foot, and middle are commonly used to serve a medical purpose and not useful to those without an injury or illness. If such a bed and accompanying mattress are sold to an individual person with an illness or injury (and not to a medical service provider or other business) pursuant to a prescription issued to that individual, the bed and mattress would be eligible for the durable medical equipment exemption, and Taxpayer would not be required to collect sales and use tax on the sale.

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.

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<sup>8</sup> Exemptions from taxation are strictly construed. Ga. Comp. R. & Regs. r. 560-12-1-.18. Thus, the statutory definition of durable medical equipment is controlling over the examples provided by the Regulation.

<sup>9</sup> O.C.G.A. § 48-8-52.