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Georgia Letter Ruling No. 2013-06-13-04 Medical & Drugs

This letter is in response to your request for guidance regarding the application of Georgia sales and use tax to hearing aid batteries.

**Facts**

Taxpayer is seeking clarification whether hearing aid batteries sold with a hearing aid or sold as replacements separate from a hearing aid are subject to Georgia's sales and use tax.

**Issue**

Are hearing aid batteries sold with a hearing aid or sold as replacements separate from a hearing aid subject to Georgia's sales and use tax?

**Analysis**

All retail purchases and sales of tangible personal property are taxable unless provided for otherwise.<sup>1</sup> Tax is levied and imposed upon the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on services described in this article that occur in this state.<sup>2</sup> "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale of tangible personal property or certain services.<sup>3</sup>

The sale or use of hearing aids is exempt from Georgia's sales and use tax. This exemption applies to all purchasers including but not limited to individual consumers, hospitals, clinics, and medical practice groups.<sup>4</sup> The statutory language does not specifically mention repair and replacement parts for hearing aids.

Likewise, the sale or use of any durable medical equipment that is sold or used pursuant to a prescription or prosthetic device that is sold or used pursuant to a prescription is exempt from Georgia sales and use tax.<sup>5</sup> "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the same.<sup>6</sup> "Durable medical equipment" means equipment including repair and replacement parts for the same, but not including mobility enhancing equipment, which:

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

<sup>2</sup> O.C.G.A. § 48-8-30.

<sup>3</sup> O.C.G.A. § 48-8-2(6)(A).

<sup>4</sup> O.C.G.A. § 48-8-3(52); Ga. Comp. R. & Regs. r. 560-12-2-.30.

<sup>5</sup> O.C.G.A. § 48-8-3(54).

<sup>6</sup> O.C.G.A. § 48-8-2(29).

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Generally is not useful to a person in the absence of illness or injury; and
- (D) Is not worn in or on the body.<sup>7</sup>

Although hearing aids are specifically excluded from the definition of “prosthetic device”<sup>8</sup> and do not fall within the scope of the definition of “durable medical equipment”, the Department allows hearing aid replacement parts to be purchased exempt, and historically, the Department has considered a battery to be a “replacement part”.<sup>9</sup>

### **Ruling**

Even though the statutory exemption language concerning hearing aids does not specifically mention repair and replacement parts, the Department considers the scope of the hearing aid exemption to be comparable to the scope of the exemption for durable medical equipment and prosthetic devices. Further, the Department considers a battery to be a “part”. Thus, retail sales of hearing aid batteries, whether sold with a hearing aid or sold as a replacement part separate from a hearing aid, are exempt from Georgia’s sales and use tax.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions 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 those expressed in this response.

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<sup>7</sup> O.C.G.A. § 48-8-2(15).

<sup>8</sup> O.C.G.A. § 48-8-2(29).

<sup>9</sup> Georgia Informational Bulletin No. SUT 2013-01-28 (addressing repair and replacement parts for certain agricultural machinery and equipment).