

Chapter 20

Medicine, Prosthetics and Medical Supplies¹

A. Exemptions for Medicines, Prosthetic Devices, and Other Medical Supplies

The following exemptions are available with respect to medicines, prosthetic devices and certain other medical supplies:

Medicine sold by prescription.² In order for this exemption to be applicable, the medicine must be of a type that requires a prescription, the sale must require a prescription, and must actually be sold by prescription. As such, sales of medicine to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription.

Prescription medicines used to prevent respiratory syncytial virus.³ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. As such, sales of these medicines (to be used for the above purposes) to a hospital, nursing home, or a similar institution or doctor are exempt.

Prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.⁴ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription (other than therapeutic radiopharmaceuticals); however, the medicine does not need to be sold by prescription. As such, sales of these medicines and therapeutic radiopharmaceuticals (to be used for the above purposes) to a hospital, nursing home, or a similar institution or doctor are exempt.

Prescription medicines used to relieve the effects of the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.⁵ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. As such, sales of these medicines (to be used for the above purposes) to a hospital, nursing home or doctor are exempt.

¹ See SC Revenue Ruling #03-2.

² South Carolina Code §12-36-2120(28)(a). See also *Associated Medical Specialist, P.A. v. South Carolina Tax Commission and South Carolina Department Of Revenue*, SC Ct. of App., Unpublished Opinion No. 97-UP-447 (1997). (Note, this case dealt with prescription medicines purchased by doctors to treat cancer; however, the exemption for prescription medicines used in the treatment of cancer, lymphoma, leukemia, or related diseases or used to relieve the effects of any such treatment was not available at the time. It was subsequently enacted by the General Assembly in 1998 and became effective on June 28, 1999. (Act 362, Section 2, of 1998))

³ South Carolina Code §12-36-2120(28)(a).

⁴ South Carolina Code §12-36-2120(28)(a).

⁵ South Carolina Code §12-36-2120(28)(a).

Free samples of prescription medicine distributed by its manufacturer and any use of these free samples.⁶ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription.

Medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients.⁷ This exemption applies to all types of medicines, not just prescription medicines.

Hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies.⁸ In order for this exemption to be applicable, these items must be sold to a diabetic under the written authorization and direction of a physician.

Disposable medical supplies.⁹ In order for this exemption to be applicable, disposable medical supplies such as bags, tubing, needles, and syringes, must be dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a licensed health care provider, must be used for the intravenous administration of a prescription drug or medicine, and must come into direct contact with the prescription drug or medicine. This exemption applies only to supplies used in the treatment of a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center. The exemption applies to "disposable" medical supplies sold on or after August 17, 2000 and does not apply to items that are reusable such as electronic pumps and other medical equipment. In addition, the exemption does not apply to supplies, such as gauze, that do not require a prescription in order to be sold to the patient.

Prosthetic devices sold by prescription.¹⁰ In order for this exemption to be applicable, the device, the sale must require a prescription and the device must actually be sold by prescription and the device must replace a missing part of the body. A device that merely replaces a missing function is not exempt. As such, sales of prosthetic devices to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription.

Dental prosthetic devices.¹¹ In order for this exemption to be applicable, the device must pertain to dentistry and must replace a missing part of the body. A device that merely replaces a missing function is not exempt. The sale does not require a prescription.

Prescription drugs – Medicare Part A Nursing Home Patient.¹² In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. It must be sold to a nursing home to be dispensed to a Medicare Part A patient residing in the nursing home.

⁶ South Carolina Code §12-36-2120(28)(a).

⁷ South Carolina Code §12-36-2120(28)(d).

⁸ South Carolina Code §12-36-2120(28)(b).

⁹ South Carolina Code §12-36-2120(28)(c).

¹⁰ South Carolina Code §12-36-2120(28)(a).

¹¹ South Carolina Code §12-36-2120(28)(e).

¹² South Carolina Code §12-36-2120(28)(f).

Prescription and over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a health care clinic that provides medical and dental care without charge to all of its patients¹³. In order for this exemption to be applicable, the medicine (whether prescription or over-the-counter) and medical supplies must be sold a health care clinic, the clinic must provide both medical and dental care, and the care must be provided without charge to all patients.

B. Other Relevant Exemptions

The statute also provides several other exemptions that may or may not apply.

Sales to the federal government. Code Section 12-36-2120(2) exempts sales of “tangible personal property ... to the federal government. Commission Decision #93-2 held that sales paid for via Medicare or Medicaid are not sales to the federal government.

Sales to charitable hospitals. Code Section 12-36-2120(47) exempts sales of tangible personal property to charitable hospitals that are exempt from property taxation under Section 12-37-220; predominantly serve children; and where the care is provided without charge to the patient.

Sales of hearing aids. Code Section 12-36-2120(38) exempts sales of “hearing aids, as defined by Section 40-25-20(5).” Sales of hearing aid batteries and cords are not exempt.

Sales during the sales tax holiday. Since the sales tax holiday applies to clothing and footwear, the exemption may apply to certain clothing and footwear worn for medical reasons. Code Section 12-36-2120(57) exempts from the sales and use tax:

- (a) sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of:
 - (i) clothing;
 - (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags;
 - (iii) footwear;
 - (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators;
 - (v) computers, printers and printer supplies, and computer software.

- (b) The exemption allowed by this item does not apply to:
 - (i) sales of jewelry, cosmetics, eyewear, wallets, watches;
 - (ii) sales of furniture;
 - (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described;
 - (iv) rental of clothing or footwear;
 - (v) a sale or lease of an item for use in a trade or business.

¹³ South Carolina Code §12-36-2120(63).

- (c) Before July tenth of each year, the department shall publish and make available to the public and retailers a list of those articles qualifying for the exemption allowed by this item.

C. Questions and Answers

The following questions and answers address the exemptions for medicines, prosthetic devices and certain other medical supplies as they relate to (a) sales to federal government hospitals and charitable hospitals predominantly serving children where care is provided without charge to the patient, (b) sales to doctors, nursing homes, hospitals and similar institutions (not discussed in Section “a”), and sales to individuals (not a doctor, nursing home, hospital or similar institution for use in treating their patients)

a. Sales to Federal Government Hospitals and Charitable Hospitals Predominantly Serving Children Where Care Is Provided Without Charge to the Patient

1. Are sales of non-prescription and prescription medicines by a pharmaceutical supplier to a charitable hospital predominantly serving children where care is provided without charge to the patient exempt from the sales and use tax?

Sales of non-prescription and prescription medicines by a pharmaceutical supplier to a charitable hospital predominantly serving children where care is provided without charge to the patient are exempt from the sales and use tax under Code Section 12-36-2120(47), provided the hospital is exempt from property taxes under Section 12-37-220.

2. Are sales of non-prescription and prescription medicines by a pharmaceutical supplier to a federal government hospital (e.g., Veterans Administration hospital) exempt from the sales and use tax?

Sales of non-prescription and prescription medicines by a pharmaceutical supplier to a federal government hospital (e.g., Veterans Administration hospital) are exempt from the sales and use tax under Code Section 12-36-2120(2).

3. Are sales by a pharmaceutical or medical equipment supplier of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar supplies for use in treating diabetics to a charitable hospital predominantly serving children where care is provided without charge to the patient exempt from the sales and use tax?

Sales by a pharmaceutical or medical equipment supplier of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar supplies for use in treating diabetics to a charitable hospital predominantly serving children where care is provided without charge to the patient are exempt from the sales and use tax under Code Section 12-36-2120(47), provided the hospital is exempt from property taxes under Section 12-37-220.

4. Are sales by a pharmaceutical or medical equipment supplier of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar supplies for use in treating diabetics to a federal government hospital (e.g., Veterans Administration hospital) exempt from the sales and use tax?

Sales by a pharmaceutical or medical equipment supplier of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar supplies for use in treating diabetics to a federal government hospital (e.g., Veterans Administration hospital) are exempt from the sales and use tax under Code Section 12-36-2120(2).

5. Are sales of tangible personal property to a federal government hospital (e.g., Veterans Administration hospital) exempt from the sales and use tax?

Sales of tangible personal property to a federal government hospital (e.g., Veterans Administration hospital) are exempt from the sales and use tax under Code Section 12-36-2120(2).

6. Are sales of tangible personal property to a charitable hospital predominantly serving children where care is provided without charge to the patient exempt from the sales and use tax?

Sales of tangible personal property to a charitable hospital predominantly serving children where care is provided without charge to the patient are exempt from the sales and use tax under Code Section 12-36-2120(47), provided the hospital is exempt from property taxes under Section 12-37-220.

b. Sales to Doctors, Nursing Homes, Hospitals and Similar Institutions (Not Discussed in Section "A" Above)¹⁴

1. Are sales of prescription medicines by a pharmaceutical supplier to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

Sales of prescription medicines by a pharmaceutical supplier to a doctor, nursing home, hospital or similar institution for use in treating their patients are not sales "by prescription" and do not qualify for the exemption found in Code Section 12-36-2120(28), unless such prescription medicines are used by the doctor, nursing home, hospital or similar institution to prevent respiratory syncytial virus or in "the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment" of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.

¹⁴ The provisions of this section do not apply to sales of prescription and over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, **sold to a health care clinic that provides medical and dental care without charge to all of its patients. These sales are exempt under South Carolina Code §12-36-2120(63).**

The phrase “related diseases” limits the exemption for medicines used in “the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, [or] . . .used to relieve the effects of any such treatment” to prescription medicines used to treat rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases or prescription medicines used to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases.

2. Are sales of prescription medicines by a pharmaceutical supplier to a doctor, nursing home, hospital or similar institution for use in preventing respiratory syncytial virus or in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, or used to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases exempt from the sales and use tax?

Sales of prescription medicines by a pharmaceutical supplier to a doctor, nursing home, hospital or similar institution for use in preventing respiratory syncytial virus or in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, or used to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases are exempt from the sales and use tax

The phrase “related diseases” limits the exemption for medicines used in “the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, [or] . . .used to relieve the effects of any such treatment” to prescription medicines used to treat rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases or medicines used to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases.

3. Are sales of non-prescription medicines by a pharmaceutical supplier to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

Sales of non-prescription medicines by a pharmaceutical supplier to a doctor, nursing home, hospital or similar institution for use in treating their patients do not qualify for the exemption found in Code Section 12-36-2120(28), and are subject to the tax.

4. Are sales of hearing aids to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

Sales of sales of hearing aids to a doctor, nursing home, hospital or similar institution for use in treating their patients are exempt from the sales and use tax under Code Section 12-36-2120(38), provided such hearing aids meet the definition found in Code Section 40-25-20(5).

Note: Sales of hearing aid batteries and cords are not exempt.

5. Are sales of prosthetic devices, other than a dental prosthetic device, to a doctor or hospital that will be surgically implanted in a patient exempt from the sales and use tax?

No, since the sale to the doctor or hospital does not require a prescription and is not actually being sold by prescription, the sale of the device to the doctor or hospital does not qualify for the exemption, and is therefore subject to the tax.

6. Are sales of dental prosthetic devices to a doctor or hospital that will be surgically implanted in a patient exempt from the sales and use tax?

Yes, provided the dental prosthetic device is a dental “prosthetic device” as defined in SC Regulation 117-332.

7. Are sales of enteral nutrition formulas to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

Sales of enteral nutrition formulas to a doctor, nursing home, hospital or similar institution for use in treating their patients do not qualify for the exemption found in Code Section 12-36-2120(28), unless such medicines are of a type that requires a prescription and are used by the doctor, nursing home, hospital or similar institution in “the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment.”

The phrase “related diseases” limits the exemption for prescription medicines used in “the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment” to prescription medicines used to treat rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases or medicines used to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases.

8. Are sales of total parenteral nutrition (“TPN”) solutions to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

Sales of total parenteral nutrition (“TPN”) solutions to a doctor, nursing home, hospital or similar institution for use in treating their patients do not qualify for the exemption found in Code Section 12-36-2120(28), unless such medicines are of a type that requires a prescription and are used by the doctor, nursing home, hospital or similar institution in “the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment.”

9. Are sales of oxygen sold in cylinders and oxygen concentrators to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

Sales of oxygen sold in cylinders and oxygen concentrators to a doctor, nursing home, hospital or similar institution for use in treating their patients do not qualify for the exemption found in Code Section 12-36-2120(28), unless such medicines (oxygen sold in cylinders and oxygen concentrators) are of a type that requires a prescription and are used by the doctor, nursing home, hospital or similar institution in preventing respiratory syncytial virus or in “the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment” of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.

The phrase “related diseases” limits the exemption for prescription medicines used in “the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment” to prescription medicines used to treat rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases or medicines used to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, and other cancer diseases.

Note: Sales of masks, tubing, regulators, and tank holders do not come within the exemption and are subject to the sales and use tax.

10. Are sales of disposable medical supplies such as bags, tubing, needles, and syringes to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

Since sales of disposable medical supplies such as bags, tubing, needles, and syringes to a doctor, nursing home, hospital or similar institution for use in treating their patients do not meet the requirements of the exemption under Code Section 12-36-2120(28), such sales are not exempt from the sales and use tax.

11. Are sales of wheelchairs to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

No.

12. Are sales by a pharmaceutical or medical equipment supplier to a doctor, nursing home, hospital or similar institution of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar supplies for use in treating diabetics exempt from the sales and use tax?

Sales by a pharmaceutical or medical equipment supplier to a doctor, nursing home, hospital or similar institution of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar supplies for use in treating diabetics are not sales “to diabetics” and do not qualify for the exemption found in Code Section 12-36-2120(28)(b).

13. Are sales of ostomy bags, catheters, and drainage units to a doctor, nursing home, hospital or similar institution for use in treating their patients exempt from the sales and use tax?

No, since the sale to the doctor or hospital does not require a prescription and is not actually being sold by prescription, sales of ostomy bags, catheters, and drainage units to the doctor or hospital for use in treating their patients do not qualify for the exemption, and are therefore subject to the tax.

c. Sales to Individuals (Not a Doctor, Nursing Home, Hospital or Similar Institution for Use in Treating Their Patients)

1. Are sales of prescription medicines by a pharmacy to an individual who provides the pharmacy a prescription from a doctor exempt from the sales and use tax?

Yes, since the medicine is of a type that requires a prescription, the sale requires a prescription, and is actually be sold by prescription, the sale is exempt from the sales and use tax.

2. Are sales of non-prescription medicines by a pharmacy to an individual who provides the pharmacy a prescription from a doctor exempt from the sales and use tax?

No, since the medicine is of a type that does not require a prescription, the sale is not exempt from the sales and use tax.

3. Are sales of oxygen sold in cylinders and oxygen concentrators by a pharmacy or a medical supply dealer to an individual exempt from the sales and use tax?

Yes, when such sales require a prescription under the law and are actually sold by prescription to an individual, oxygen sold in cylinders and oxygen concentrators have been held exempt as medicines sold by prescription.

Note: Sales of masks, tubing, regulators, and tank holders do no come within the exemption and are subject to the sales and use tax.

4. Are sales of enteral nutrition formulas by a pharmacy or a medical supply dealer to an individual exempt from the sales and use tax?

Sales of enteral nutrition formulas to individuals are exempt from the sales and use tax under Code Section 12-36-2120(28)(a) as medicines sold by prescription only if the enteral nutrition formula is of a type that, under the law, requires a prescription in order to be sold to the patient. Sales of enteral nutrition formulas that do not require a prescription in order to be sold to the patient are subject to the sales and use tax

5. Are sales of total parenteral nutrition (“TPN”) solutions by a pharmacy or a medical supply dealer to an individual who provides the pharmacy a prescription from a doctor exempt from the sales and use tax?

Sales of total parenteral nutrition (“TPN”) solutions to individuals are exempt from the sales and use tax under Code Section 12-36-2120(28)(a) as medicines sold by prescription since federal law requires that total parenteral nutrition (“TPN”) solutions be sold by prescription when sold to the patient.

6. Are sales by medical equipment and supply dealers to an individual of the following items exempt during the “sales tax holiday?”

- orthopaedic shoes
- mastectomy and nursing bras
- latex and vinyl gloves worn by a caregiver in the home (usually a family member)
- hospital-type gowns worn in the home by a patient
- diabetic shoes worn by a person with diabetes
- compression hosiery
- incontinent underwear
- dressess worn by nurses or in-home caregivers paid for by the individual

Sales by medical equipment and supply dealers of the above items during the “sales tax holiday” are taxed or exempt as follows:

- orthopaedic shoes
 - exempt during the “sales tax holiday”
- mastectomy and nursing bras
 - exempt during the “sales tax holiday”
- latex and vinyl gloves worn by a caregiver in the home (usually a family member)
 - exempt during the “sales tax holiday” when used by a family member
 - taxable during the “sales tax holiday” when used by a paid caregiver since it would constitute safety clothing for use in a trade or business.
- hospital-type gowns worn in the home by a patient
 - exempt during the “sales tax holiday”
- diabetic shoes worn by a person with diabetes
 - exempt during the “sales tax holiday”
- compression hosiery
 - exempt during the “sales tax holiday”
- incontinent underwear
 - exempt during the “sales tax holiday”

dresses worn by nurses or in-home caregivers paid for by the individual exempt during the “sales tax holiday” provided the nurse or caregiver is not required by her employer to wear a specific type of uniform. If the nurse or caregiver is merely required to wear a nurse-style dress, but not a specific style or make, then the exemption is applicable. If the nurse is required to wear a specific style or make, then the dress constitutes an employee uniform and the exemption is not applicable.

Note: Rentals of the above items do not qualify for the “sales tax holiday” exemption since Code Section 12-36-2120(57)(b) specifically states that the exemption does not apply to the “rental of clothing or footwear.”

7. Are sales of wheelchairs to an individual exempt from the sales and use tax?

No.

8. Are sales of hearing aids to an individual exempt from the sales and use tax?

Sales of hearing aids to an individual are exempt from the sales and use tax under Code Section 12-36-2120(38), provided such hearing aids meet the definition found in Code Section 40-25-20(5).

Note: Sales of hearing aid batteries and cords are not exempt.

9. Are sales of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies to an individual exempt from the sales and use tax?

Sales of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies to an individual are exempt from the sales and use tax under Code Section 12-36-2120(28)(b), provided the individual purchasing such items is a diabetic and the sale is pursuant to the written authorization and direction of a physician. See SC Regulation 117-332.

Note: The exemption does not apply to sales of clothing or footwear specifically designed for diabetics (e.g., diabetic shoes). Sales (not including rentals) of clothing and footwear specifically designed for diabetics are only exempt from the tax during the “sales tax holiday,” provided such items are not used in a trade or business. See Question #6 above.

10. Are sales of ostomy bags, catheters, and drainage units to an individual exempt from the sales and use tax?

Sales of ostomy bags, catheters, and drainage units to an individual are only exempt from the sales and use tax if such items are used to replace a missing part

of the body (e.g., a missing part of the intestines) and if sold by prescription. If the ostomy bags, catheters, and drainage units are used to replace a missing function of the body (i.e., the part of the body remains, but it is not functioning or is not functioning properly), then sales of such items to an individual are not exempt and subject to the tax See Commission Decision #90-39.

D. Special Tax Rate for Certain Durable Medical Equipment

Code Section 12-36-2120(74) has been added to provide an exemption for durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws. In order for the purchase of the durable medical equipment and related supplies to be exempt, the following conditions must be met:

1. The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs.
2. State or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax.
3. The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina.

Exemption Phased-In

An uncodified provision of the legislation provides that the exemption will be phased in by reducing the rate of tax.¹⁵

For sales made on or after July 1, 2007, the tax rate is 5.5%. Subsequent tax rate reductions are dependent on a forecast by the Board of Economic Advisors (“BEA”) that the annual general fund growth for the next fiscal year (July 1 through June 30) equals at least 5%. This determination will be made each February 15th and if a 5% or more annual general fund growth is forecast, then the tax rate will be reduced further as follows:

4% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement,

3% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement,

¹⁵ See Act 99 of 2008, Section 1.

2% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement, and

1% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement.

Sales on or after July 1st of the next State fiscal year following the next February 15th forecast by the BEA meeting the 5% growth requirement will be fully exempt without regard to subsequent BEA forecasts.

As of the date of publication, sales of durable medical equipment meeting the requirement of this “exemption” are taxed at a state rate of 5.5%.