

## **IMPORTANT NOTICE EFFECTIVE AUGUST 1, 2009**

To: Durable Medical Equipment Retailers

From: South Carolina Department of Revenue

### **RE: NOTICE OF PENALTY WAIVER TO DURABLE MEDICAL EQUIPMENT RETAILERS**

The South Carolina Supreme Court, in the case of Home Medical Systems, Inc. vs. South Carolina Department of Revenue, held that the following items at issue— nebulizers, NIPPV, CPAP, and BiPAP devices and ventilators—did not fall within the guidelines for tax exemption and therefore are subject to the state sales tax rate.

The Court also ruled in this case that the DOR's definition of prosthetic devices was correct in saying that in order to receive the tax exemption 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.**

Additionally, the Court ruled enteral nutritional formulas do not come within the guidelines necessary to receive an exemption and also are subject to the state sales tax rate.

As a result of this ruling, the South Carolina Department of Revenue, for a period of thirty (30) days from **August 1, 2009 to August 31, 2009**, will extend a penalty waiver to durable medical equipment (DME) retailers who have either failed to file sales tax returns and/or pay the sales and use tax on the sale of the aforementioned items.

In order to receive the penalty waiver retailers **must** contact the Department no later than **5:00 p.m. on Monday, August 31, 2009**, and do so either in writing (with a postmarked envelope) or via telephone using the contact information below. If you contact us in writing, please include the retailer's full name, taxpayer identification numbers, retail sales license numbers and an address, telephone number and point-of-contact for follow-up. Please note interest is applicable in all situations. There will be no waiver of interest.

If a taxpayer notifies us in writing or by telephone that they want to participate in this process the Department will work with taxpayers to help file the appropriate returns and remit any applicable taxes. Those taxpayers who fail to contact the Department during the month of August will be subject to all applicable penalties and interest.

Taxpayers who have filed protective claims for refund alleging entitlement to refunds of sales taxes paid on sales of the items covered by the 2007 Administrative Law Court ruling will receive individual notice from the Department.

Those taxpayers who have ceased filing sales tax returns and stopped remitting sales taxes under Senate Bill 310, Section 1 (Act No.99) which speaks to a new exemption for durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws should be reminded that the legislation provides the exemption be phased in by reducing the rate of tax according to state sales tax collections equaling to at least 5%. Those collections were not met; therefore, these items are still subject to a sales tax rate of 5.5%.

The Department is offering this 30-day penalty waiver to encourage voluntary compliance with the Court's ruling and DME retailers must note that this offer will not extend beyond August 31, 2009 and that by not voluntarily coming forward they could be subject to applicable penalties such as failure to file penalties and/or failure to pay penalties respectively.

This notice can be found on the Department's website ([www.sctax.org](http://www.sctax.org)) under its "What's New" section. In addition, the court case is available at [www.sccourts.org/opinions/displayOpinion.cfm?caseNo=26638](http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=26638).

To contact the Department for penalty waiver or for further information please call 803-898-5970 between the hours of 8:30 AM to 5:00 P.M. or via U.S. mail at Sales and Use Tax Audit Division, ATTN: Sales Tax Penalty Waiver, P.O. Box 125, Columbia, SC 29214-0066.

**\*In order to receive the penalty waiver retailers must contact the Department no later than 5:00 p.m. on Monday, August 31, 2009.**