



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC INFORMATION LETTER #24-10

SUBJECT: Durable Medical Equipment—Exemption
(Sales and Use Tax)

EFFECTIVE DATE: The South Carolina Supreme Court’s ruling was final on June 26, 2024. The change described in this Informational Letter applies to all periods open under the statute.

MODIFIES: SC Revenue Ruling #11-3
SC Revenue Ruling #10-2

REFERENCES: S.C. Code Ann. Section 12-36-910(A) (2014)
S.C. Code Ann. Section 12-36-2120(74) (2014)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

PURPOSE:

In *Orthofix, Inc. v. S.C. Dep’t of Revenue* and *KCI USA Inc., v. S.C. Dep’t of Revenue*, App. Case No. 2023-000318 (June 26, 2024), the South Carolina Supreme Court held that the sales and use tax exemption for durable medical equipment (DME) found in S.C. Code Ann. Section 12-36-2120(74) is unconstitutional. The Supreme Court found that certain language within the exemption discriminates against interstate commerce, which is prohibited under the dormant Commerce Clause. The Supreme Court found the entire exemption to be invalid, determining that this language is not independent and severable from the remainder of the exemption.

This Information Letter gives notice that the sales and use tax exemption for DME found in S.C. Code Ann. Section 12-36-2120(74) is now invalid and that sellers of DME are required to collect and remit sales tax on their sales of DME within this State after June 26, 2024. Additionally, this Information Letter addresses sales of DME to Medicaid and/or Medicare beneficiaries, where South Carolina or United States funds under either the Medicaid or Medicare programs are used to partially or fully pay for the DME on behalf of the beneficiaries.

LAW AND DISCUSSION:

South Carolina imposes a “sales tax, equal to [six]¹ percent of the gross proceeds of sales, . . . upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.” S.C. Code Ann. Section 12-36-910(A). In 2007, the General Assembly enacted a sales tax exemption that exempts from sales taxes DME and related supplies:

- (a) as defined under federal and state Medicaid and Medicare laws;
- (b) which is paid directly by funds of this State of the United States under the Medicaid or Medicare programs, where state or federal law or regulation authorizing the payment prohibits the payment of the sale or use tax; and
- (c) sold by a provider who holds a South Carolina retail sales license *and whose principal place of business is located in this State . . .*

S.C. Code Ann. Section 12-36-2120(74) (emphasis added).

DME Exemption Invalidated

In *Orthofix, Inc.*, the South Carolina Supreme Court held that the phrase “whose principal place of business is located in this State” discriminated against interstate commerce because it treated out-of-state providers differently than in-state providers. Specifically, the Court found that out-of-state providers of DME were required to pay sales tax on its sales of DME in the State, however in-state providers of DME were exempt from the sales tax. While the Court only found this portion of the exemption to be unconstitutional, the Respondents (Orthofix and KCI USA) were unable to show that this unconstitutional portion of the exemption statute was independent and severable from the remainder of the exemption. The Court therefore deemed the entire exemption invalid.

Because the exemption is invalid, all sellers of DME are now required to pay sales tax on their sales of DME within this State.

Sales of DME to Medicaid and/or Medicare Beneficiaries

Medicare and Medicaid transactions are subject to the State’s sales tax.² Sellers of DME within this State who are paid partially or fully by Medicaid or Medicare must remit sales taxes on the sales of DME, regardless of whether Medicaid or Medicare will reimburse the tax.³

¹ Section 12-36-1110 increased the sales and use tax rate by 1% beginning June 1, 2007.

² See S.C. Code Ann. Section 12-36-110(j).

³ The person engaged in the sale of tangible personal property within this State is liable for remitting the sales tax. See S.C. Code Ann. Section 12-36-910(A).

The South Carolina Supreme Court’s decision has no effect on federal law. Therefore, any laws regarding DME paid partially or fully by Medicaid or Medicare on behalf of their beneficiaries remain in full force and effect.

Sellers of DME may be prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed or paid by Medicare or Medicaid. South Carolina’s statute specifically addresses this issue. S.C. Code Ann. Section 12-36-110(j) states:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as whole sales. . . (1) The terms include: (j) “sales, not otherwise exempted⁴, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax, if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed.”

Accordingly, sellers of DME to Medicaid or Medicare beneficiaries, where the transaction includes a full or partial payment from Medicaid or Medicare, must remit sales tax on the portion of the transaction allowed under Section 12-36-110(j).

⁴ Other exemptions include, but are not limited to, the sale of “tangible personal property or receipts of any business which the State is prohibited from taxing by the Constitution or laws of the United States of America or by the Constitution or laws of this State” (S.C. Code Ann. Section 12-36-2120(1)) and sales of “tangible personal property sold to the federal government” (S.C. Code Ann. Section 12-36-2120(2)).