



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214-0575

SC PRIVATE LETTER RULING #22-2

SUBJECT: Chemically Injected Medication – Exemption in
Code Section 12-36-2120(80)
(Sales and Use Tax)

REFERENCES: S.C. Code Ann. Section 12-36-2120(80) (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: A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department’s opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

QUESTION:

Is the sale at retail of X, a pain medication administered as described in the facts, exempt from the sales and use tax as an injectable medication under Code Section 12-36-2120(80)?

CONCLUSION:

Since the X pain medication, as described in the facts, is chemically forced (i.e., injected) below the surface of the skin and is administered by a physician or other healthcare professional in a medical office under the direct supervision of a physician, the sale at retail of X to a physician or a physician’s practice is exempt from the sales and use tax as an injectable medication under Code Section 12-36-2120(80).

FACTS:

ABC (“ABC”) is a pharmaceutical company that sells a non-opioid pain medication (hereinafter “X”) used to treat individuals suffering from post-herpetic neuralgia and diabetic peripheral

neuropathy. X is required to be administered by a physician, or other healthcare professional in a medical office under the direct supervision of a physician.

X utilizes ABC's proprietary X matrix system, which chemically delivers the medication directly into the dermis layers below the surface of the skin exactly like syringe injections (i.e., below the epidermis and stratum corneum layers of the skin) to deactivate nerve fibers and pain receptors. The United States Food and Drug Administration does not consider X a "patch," as it is differentiated from over-the-counter and prescription patches in the market that are not required to be applied by, or under the supervision of, a physician.

The delivery of X's active ingredient below the surface of the skin occurs through the use of a chemical carrier known as Z embedded in the matrix system's microreservoir. Once the X matrix system is applied to the skin, the chemical carrier permeates the skin, where the active ingredient becomes supersaturated. Due to the supersaturation, the active ingredient is then forced through the channels of the skin directly into the dermis. The way the matrix system forces a high concentration of the active ingredient below the surface layers of the skin to deactivate nerve fibers and pain receptors in such a short period of time is what makes X unique and different from a patch.

If the compound used in X were applied directly to the skin without use of the matrix system, the active ingredient would not be forced through the skin's channels rapidly, and would instead work more like a topical cream or lotion, ineffectively targeting the nerve fibers and pain receptors in the dermis.

LAW AND ANALYSIS:

Code Section 12-36-2120(80)(a) exempts from sales and use tax the gross proceeds of sales and sales price of:

... injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services (CMS) certified kidney dialysis facility. For purposes of this exemption, "biologics" means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms[.]

Since X is a medication used in the treatment of a disease, it must be determined if X is "injected" by or pursuant to the supervision of a physician in an office which is under the supervision of a physician.

It is an accepted practice in South Carolina to resort to the dictionary definition to determine the literal meaning of a word used in statutes. For cases where this has been done, see *Hay v. South Carolina Tax Commission*, 273 S.C. 269, 255 S.E.2d 837 (1979); *Fennell v. South Carolina Tax Commission*, 233 S.C. 43, 103 S.E.2d 424 (1958); *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 S.C. 484, 60 S.E.2d 682 (1950).

The *Merriam-Webster Dictionary*¹ provides, in part, the following definition for the word “inject,” the basis for the word “injectable” as used in the exemption:

- 1a:** to introduce into something forcefully // *inject* fuel into an engine
- b:** to force a fluid into (as for medical purposes) // *inject* a drug into the bloodstream[.]

Based on the above, and for purposes of the exemption in Code Section 12-36-2120(80), an injectable medication (or injectable biologic) is one in which a medication or biologic is forcefully introduced into the body for medical purposes (e.g., treatment, prevention).

In the matter at hand, the physician uses the X matrix system. This system, as described in the facts, chemically forces (i.e., injects) the active ingredient directly to nerve fibers and pain receptors in the dermis. As stated in the facts, the United States Food and Drug Administration does not consider X a “patch.”

While an injection typically uses a needle and a syringe,² the exemption statute does not limit the injection method. However, Code Section 12-36-2120(80) does not apply to patches, creams, and other similar methods of delivery in which the medication is not forced into the body, but merely absorbed into the skin.³

In conclusion, since the X pain medication is chemically forced (i.e., injected) below the surface of the skin and is administered by a physician or other healthcare professional in a medical office under the direct supervision of a physician, the sale at retail of X to a physician or a physician’s practice is exempt from the sales and use tax as an injectable medication under Code Section 12-36-2120(80).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

November 1 _____, 2022
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

¹ *Merriam-Webster* online dictionary at <https://www.merriam-webster.com/dictionary/inject> (August 25, 2022).

² For example, medicine can be injected by a “jet injector.”

³ While patches and creams do not qualify for the exemption under Code Section 12-36-2120(80), they may be exempt under another provision of Code Section 12-36-2120 (e.g., medicine sold by prescription). For a discussion of medical exemptions under Code Section 12-36-2120, see SC Revenue Ruling #11-3.