

SC REVENUE RULING #03-2

- SUBJECT:** Medicines, Prosthetic Devices and Other Medical Supplies
(Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.”
- REFERENCES:** S. C. Code Ann. Section 12-36-2120 (2000, Supp. 2001)
S. C. Code Ann. Section 12-36-110 (2000)
SC Regulation 117-308.8
SC Regulation 117-332
S. C. Code Ann. Section 12-36-950 (2000)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2001)
SC Revenue Procedural Bulletin #03-1
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. A Revenue Ruling is an advisory opinion; it does not have the force or effect of law and is not binding on the public. It is, however, the Department’s position and is binding on agency personnel until superseded or modified by a change in statute, regulations, court decisions, or advisory opinion.

INTRODUCTION:

The South Carolina sales and use tax statute exempts the retail sale of certain medicines, prosthetic devices and medical supplies. The purpose of this advisory opinion is to provide guidance as to the application of these exemptions with respect to sales of these items to individuals, doctors, clinics and hospitals and similar facilities.

LAW AND DISCUSSION:

Code Section 12-36-2120(28) exempts from the sales and use tax:

- (a) medicine and prosthetic devices sold by prescription, prescription medicines used to prevent respiratory syncytial virus, prescription medicines and therapeutic radiopharmaceuticals used in the treatment of cancer, lymphoma, leukemia, or related

diseases, including prescription medicines used to relieve the effects of any such treatment, and free samples of prescription medicine distributed by its manufacturer and any use of these free samples;

- (b) hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics under the authorization and direction of a physician;
- (c) disposable medical supplies such as bags, tubing, needles, and syringes, which are 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, which are used for the intravenous administration of a prescription drug or medicine, and which 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;
- (d) medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients; and
- (e) dental prosthetic devices;

Furthermore, Code Section 12-36-110 defines "retail sale," in part as:

(1)(i) sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property;

SC Regulation 117-308.8 states:

Hospitals, infirmaries, sanitariums, nursing homes and like institutions are engaged primarily in the business of rendering services. They are not liable for the sales tax with respect to their gross proceeds or receipts from meals, bandages, dressings, drugs, x-ray photographs and other tangible personal property where such property is used in the rendering of the primary medical service to patients. This is true irrespective of whether or not such tangible items are billed separately to their patients. Hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users or consumers of such tangible personal property and the instate sellers of these items are required to report and remit the tax due on the sale of such property to the hospitals, infirmaries, sanitariums, nursing homes, and like institutions or in the case of out-of-state purchases, use tax shall be reported and remitted by the purchaser.

Where meals and beverages are furnished by hospitals, infirmaries, sanitariums, nursing homes and like institutions to the patient as a part of their primary medical service, with or without a separate charge being made, the hospitals, infirmaries, sanitariums, nursing

homes and like institutions are deemed to be the users or consumers of the prepared meal if same is purchased or acquired or the users or consumers of the unprepared food products if the hospitals, infirmaries, sanitariums, nursing homes and like institutions purchase such products and prepare the meal.

Sales of meals, foodstuffs or beverages by hospitals, infirmaries, sanitariums, nursing homes or like institutions to members of the staff, nurses, attendants, employees, visitors or patients, other than those meals furnished as a part of the primary medical service rendered, are sales at retail and such institution is required to obtain a retail license for each location and report and remit the sales tax on the gross proceeds of such sales, to include sales for cash, credit, payroll deduction and sales at special event functions. This includes sales made in institutions, cafeterias, snack bars, canteens and commissaries.

Where drugs, prosthetic devices and other supplies are furnished to their patients as a part of the medical service rendered, such hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be users or consumers of such drugs, prosthetic devices and other supplies.

Gases such as oxygen, etc., sold to hospitals, medical doctors, dentists, and others for professional use are subject to the sales or use tax, whichever may apply.

SC Regulation 117-332 (previously SC Regulation 117-174.257), "Medicines, Prosthetic Devices and Hearing Aids," states:

Code Section 12-36-2120(28) exempts from the sales and use taxes:

- (a) medicines and prosthetic devices sold by prescription, [prescription medicines used to prevent respiratory syncytial virus,]¹ prescription medicines and therapeutic radiopharmaceuticals used in the treatment of cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment, and free samples of prescription medicine distributed by its manufacturer and any use of these free samples;
- (b) hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics under the authorization and direction of a physician;
- (c) medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients; and
- (d) dental prosthetic devices.

¹ The exemption for "prescription medicines used to prevent respiratory syncytial virus" became effective on June 18, 2003 and is not presently shown in SC Regulation 117-332. A proposal to modify this regulation to include this new exemption will be submitted to the General Assembly in the near future.

To assist in the administration of this exemption, the Department has adopted definitions for the terms "medicine" and "prosthetic devices" as follows:

"Medicine" - a substance or preparation used in treating disease.

"Prosthetic Device" - an artificial device to replace a missing part of the body.

The sale of prescription lenses that replace a missing part of the eye are exempted from the tax, as for example eyeglasses prescribed for a person whose natural lenses have been surgically removed.

Eyeglasses, contact lens, hearing aids and orthopedic appliances, such as braces, wheelchairs and orthopedic custom-made shoes, do not come within the exemption at Code Section 12-36-2120(28). However, sales of hearing aids are exempt pursuant to Code Section 12-36-2120(38).

Hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics are only exempt if sold pursuant to the written authorization and direction of a physician. (Emphasis added.)

Code Section 12-36-950 states:

It is presumed that all gross proceeds are subject to the tax until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail is on the seller.

However, if the seller receives a resale certificate signed by the purchaser stating that the property is purchased for resale, the liability for the sales tax shifts from the seller to the purchaser.

The resale certificate must include the purchaser's name, address, retail sales tax license number, and any other provisions or information considered necessary by the department.

The department may require the seller to provide information it considers necessary for the administration of this section.

In reviewing the above, one issue that arises concerns the taxability of medicines used by doctors, nursing homes, hospitals and similar institutions in their practice in providing their professional services.

A similar issue was addressed in 1997 in an unpublished decision by the South Carolina Court of Appeals in 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.

In *Associated Medical*, the Court held that a professional association specializing in oncology and hematology was the user and consumer of chemotherapy drugs it administered to patients as

part of its professional services. The Court, while acknowledging that these were prescription drugs, held that these drugs were not sold by prescription. Therefore, the sale of these drugs to the professional association did not qualify for the exemption for “medicine ... sold by prescription.” See Code Section 12-36-2120(28). Note, 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 subsequently enacted by the General Assembly in 1998 and became effective on June 28, 1999. (Act 362, Section 2, of 1998)

The terms “sale at retail” and “retail sale” found in Code Section 12-36-110(i) include sales of “drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered.” That section further states that “[t]hese institutions, companies, and professionals are deemed to be the users or consumers of the property.”

The exemption does not exempt medicine. It only exempts “medicine ... sold by prescription;” “prescription medicines used to prevent respiratory syncytial virus;” “prescription medicines and therapeutic radiopharmaceuticals used in the treatment of cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment;” and certain free samples or donated medicines.

Therefore, in order for the retail sale of medicine (other than those used to prevent respiratory syncytial virus or used in the treatment of cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment) to be exempt, the retail sale must be one in which a prescription is used to purchase the medicine. In addition, the statute specifically exempts “prescription medicines used to prevent respiratory syncytial virus” and “prescription medicines and therapeutic radiopharmaceuticals used in the treatment of cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment.” These provisions would have been unnecessary if the exemption for “medicine ... sold by prescription” exempted all prescription medicines purchased by doctors or hospitals for the benefit of a patient of the doctor or hospital. However, the exemption only applies to medicines when sold by prescription.

In addition, the Court noted that “[i]t is not unusual for a sales and use tax exemption to focus on a transaction to determine whether an item is exempt from taxation. A substantial number of sales tax and use exemptions focus on items sold by or to particular customers, or items used by a particular customer.” As such, the Court noted that the language of the statute does not exempt prescription medicines sold to a professional medical association since they were not “sold by prescription.”

Finally, SC Technical Advice Memorandum #88-23 states “it is unreasonable to interpret the intent of the legislature so as to exempt...medicines and drugs merely because such items are sold pursuant to a prescription. Therefore, ... medicines [to be exempt] must require a prescription.”

Based on the above, sales by suppliers to doctors, nursing homes, hospitals and similar institutions of prescription medicines for use in their practices and institutions in treating patients are retail sales. However, such sales to doctors, nursing homes, hospitals and similar institutions

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 to prevent respiratory syncytial virus or in “the treatment of cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment.” In addition, the phrase “related diseases” limits the exemption for medicines used in “the treatment of cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment” to medicines used to treat cancer, lymphoma, leukemia, and other cancer diseases or medicines used to relieve the effects of any such treatment of cancer, lymphoma, leukemia, and other cancer diseases.

The principles established in *Associated Medical*, also apply to prosthetic devices. The exemption does not exempt prosthetic devices. It only exempts “prosthetic devices sold by prescription.” Therefore, in order for the prosthetic devices to be exempt, the retail sale must be one in which a prescription is used to purchase the prosthetic device. In addition, the statute specifically exempts “dental prosthetic devices.” This provision would have been unnecessary if the exemption for “prosthetic devices sold by prescription” exempted dental prosthetic devices purchased by dentists from dental labs for the benefit of a particular patient of the dentist. However, the exemption only applies to prosthetic devices when sold by prescription.

Therefore, sales of prosthetic devices, other than dental prosthetic devices, to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription and are not sold by prescription.

SUMMARY OF EXEMPTIONS FOR MEDICINES, PROSTHETIC DEVICES, AND OTHER SUPPLIES UNDER CODE SECTION 12-36-2120(28):

Based on the above statutes and regulations, it is the opinion of the Department that the application of the above exemptions for medicines is as follows:

Medicine sold by prescription. 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. 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 cancer, lymphoma, leukemia, or related diseases. 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 cancer, lymphoma, leukemia, or related diseases. 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.

Free samples of prescription medicine distributed by its manufacturer and any use of these free samples. 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. 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. 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. 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. 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. 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.

SUMMARY OF OTHER RELEVANT EXEMPTIONS:

The statute also provides several other exemptions that may or may not apply. Code Section 12-36-2120 also exempts from the sales and use tax:

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. 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.

(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.

Note: Since the sales tax holiday applies to clothing and footwear, the exemption may apply to certain clothing and footwear worn for medical reasons.

QUESTIONS AND ANSWERS:

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):

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 cancer, lymphoma, leukemia, or related diseases, [or] ...used to relieve the effects of any such treatment” of cancer, lymphoma, leukemia, or related diseases.

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

The phrase “related diseases” limits 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” to prescription medicines used to treat cancer, lymphoma, leukemia, and other cancer diseases or medicines used to relieve the effects of any such treatment of 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 not 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.

SOUTH CAROLINA DEPARTMENT OF REVENUE

S/Burnet R. Maybank
Burnet R. Maybank, Director

July 2, 2003
Columbia, South Carolina