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State of South Carolina  
**Department of Revenue**  
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Website Address: <http://www.sctax.org>

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SC REVENUE RULING #10-2

- SUBJECT:** Medicines, Prosthetic Devices, Diabetic Supplies and  
Other Medical Supplies  
(Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** SC Revenue Ruling #03-2 and all previous advisory opinions  
and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-36-2120 (2000, Supp. 2008)  
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. 2008)  
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the  
public and to Department personnel. It is an advisory opinion  
issued to apply principles of tax law to a set of facts or general  
category of taxpayers. It is the Department's position until  
superseded or modified by a change in statute, regulation, court  
decision, or another Departmental 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 rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment, 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;
- (f) prescription drugs dispensed to Medicare Part A patients residing in a nursing home are not considered sales to the nursing home and are not subject to the sales tax.<sup>[1]</sup>

Code Section 12-36-2120(63) exempts (effective June 7, 2005) from the sales and use tax:

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.

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<sup>1</sup> The exemption for prescription drugs dispensed to Medicare Part A patients residing in a nursing home became effective July 1, 2007.

Code Section 12-36-2120(74) provides an exemption for durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws (effective July 1, 2007).

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.

However, this exemption is being phased-in over several years. An uncodified provision of the legislation that enacted the exemption provides that the exemption will be phased in by reducing the rate of tax.<sup>2</sup>

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 15<sup>th</sup> 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 1<sup>st</sup> of next State fiscal year (July 1 through June 30) following the next February 15<sup>th</sup> forecast by the BEA meeting the 5% growth requirement,

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

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

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

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

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<sup>2</sup> See Act No. 99, Section 1, of 2007.

As of the date of the publication of this document, qualifying sales of durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws are subject to a 5.5% state tax rate (plus any applicable local tax rate).

Furthermore, Code Section 12-36-110(1) defines "retail sale," in part as:

(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;

(j) sales, not otherwise exempted, 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.

SC Regulation 117-308.8, "Hospitals, Infirmaries, Sanitariums, Nursing Homes and like Institutions," 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,<sup>3</sup>] prescription medicines and therapeutic radiopharmaceuticals used in the treatment of [rheumatoid arthritis,<sup>4</sup>] 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.

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<sup>3</sup> 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. See also Act No. 23 of 2009, Part IB, Section 89, Proviso 89.79 which, through a temporary proviso set to expire on June 30, 2006, changed the effective date of this exemption to January 1, 1999 and provided that no refund of sales and use taxes may be claimed as a result of this change in the effective date.

<sup>4</sup> The exemption for "prescription medicines used in the treatment of rheumatoid arthritis" or "used to relieve the effects of any such treatment" became effective on July 1, 2005 and is not presently shown in SC Regulation 117-332.

[(f) prescription drugs dispensed to Medicare Part A patients residing in a nursing home are not considered sales to the nursing home and are not subject to the sales tax.<sup>5</sup>]

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.

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<sup>5</sup> The exemption for "prescription drugs dispensed to Medicare Part A patients residing in a nursing home" became effective on July 1, 2007 and is not presently shown in SC Regulation 117-332.

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 professional services to their patients.

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 to the doctor 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 rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment;” certain free samples or donated medicines; and prescription medicines “dispensed to Medicare Part A patients residing in a nursing home.”

Therefore, in order for the exemption for “medicine ... sold by prescription” to apply, 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 rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment” and “prescription ... medicines ... sold to a health care clinic that provides medical and dental care without charge to all of its patients” and “prescription drugs dispensed to Medicare Part A patients residing in a nursing home.” These provisions would have been unnecessary if the exemption for “medicine ... sold by

prescription” exempted all prescription medicines purchased by doctors or hospitals or similar institutions for the benefit of a patient of the doctor, hospital or institution. However, the exemption for “medicine ... sold by prescription” 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.”

The South Carolina Supreme Court affirmed this longstanding position of the Department in a separate case in 2009 – *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009). In its decision, the Court held:

Regarding the enteral nutritional formulas,<sup>[6]</sup> the ALC<sup>[7]</sup> found they were “medicine sold by prescription.”<sup>[8]</sup> The DOR<sup>9</sup> argues that because the formulas are “over the counter” (OTC) products<sup>[10]</sup> which do not **require** a prescription, the ALC erred. Furthermore, the DOR contends that CMNs<sup>[11]</sup> are not equivalent to a prescription. We agree.

As discussed above, the DOR has set forth a definition for “medicine by prescription” – the medicine must be of a type that requires a prescription, the sale must require a prescription, and it must actually be sold by prescription. Taxpayer argues that a prior legislative version (a 1970 reimbursement statute) more explicitly stated the requirement – “medicines required by law to be sold only by prescription” – and therefore, the current language is not **exclusively** for medicines that require a prescription. In our opinion, however, the current statutory language – “medicine ... sold by prescription” – clearly evidences a

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<sup>6</sup> Earlier in the decision, the Court described “enteral nutritional formulas” as follows: “These are prescribed for patients who, due to an illness or disease, are unable to consume food products orally. The formula prescribed is selected by the physician based on the caloric and metabolic needs of the individual patient. The formulas may include specific nutrients to treat specific metabolic disorders such as sodium imbalances and protein needs. Enteral formulas are typically administered by: (1) a gravity feed bag and tubing connected to a feeding tube inserted in the patient, or (2) an electronic pump which also requires bags and tubing and connects to a feeding tube or catheter inserted in the patient.”

<sup>7</sup> ALC means “Administrative Law Court.”

<sup>8</sup> The Court noted in a footnote here: “We recognize the ALC found that all the items at issue – even the durable devices – were medicine sold by prescription. In making this determination, the ALC relied on the definition of medicine for pharmacists found in S.C. Code Ann. § 40-43-30(16). We agree with the DOR that this definition has no application to the definition of medicine in the sales tax exemption statute found in section 12-36-2120(28)(a). See § 40-43-30 (where statute specifies that the definitions are for “purposes of **this** chapter”) (emphasis added).”

<sup>9</sup> DOR means “Department of Revenue.”

<sup>10</sup> The Court noted in a footnote here: “One example the DOR highlights is PediaSure with Fiber which can be purchased at a grocery store.”

<sup>11</sup> CMN means “Certificate of Medical Necessity.”



legislative intent that the exemption be only for those medicines requiring a prescription. See TNS Mills, Inc., supra (tax exemption statute must be given its plain, ordinary meaning and must be strictly construed **against** the claimed exemption.<sup>[12]</sup>

Finally, SC Technical Advice Memorandum #88-23 further demonstrates the Department's longstanding policy on this issue when it states that "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, nursing home, hospital or similar institution (a) to prevent respiratory syncytial virus; (b) in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; (c) to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; or (d) are dispensed to a Medicare Part A patient residing in a nursing home. In addition, 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.

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

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<sup>12</sup> The Court noted in a footnote here:

Moreover, in another section of the sales tax exemption statute, the Legislature seems to have made a distinction between prescription and OTC medicines. The statute provides the following exemption:

(63) 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.

§ 12-36-2120. Thus, if the Legislature had intended to include OTC medicines in the exemption at issue here, it could have used language evidencing that intent.

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.

In addition, in *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, Opinion No. 26638 (April 20, 2009) the South Carolina Supreme Court upheld the Department's longstanding definition of a "prosthetic device," as set forth in SC Regulation 117-332, as "an artificial device to replace a missing part of the body." A device that merely replaces a missing function is not exempt.

Finally, Code Section 12-36-2120(63) exempts from the tax, effective June 7, 2005, "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." Again, the "prescription medicine" portion of this exemption would have been unnecessary if the exemption for "medicine ... sold by prescription" exempted all prescription medicines purchased by doctors or hospitals or similar institutions for the benefit of a patient of the doctor, hospital or institution. On the contrary, all prescription medicines purchased by hospitals, similar institutions or doctors are not exempt, and an interpretation of the statute in such a way would cause subsection (63) to become superfluous. It is well settled law in this state that all provisions in a statute must be given meaning. See, *SC Coastal Conservation League v. SC Department of Health and Environmental Control*, 380 SC 349, 3698, 669 S.E.2d 899, 909 (Ct. App. 2008) [The court must presume the legislature intended to accomplish something with an enacted statute and did not intend for a section or provision to be purposeless or futile.

## **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.<sup>13</sup> 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

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<sup>13</sup> See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009).

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.** 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. (The provisions of this exemption applicable to rheumatoid arthritis became effective on July 1, 2005.)

**Prescription medicines used to relieve the effects of the treatment of rheumatoid arthritis, 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. (The provisions of this exemption applicable to rheumatoid arthritis became effective on July 1, 2005.)

**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.** While a prescription is not required, 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 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.<sup>14</sup> 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.<sup>15</sup> The sale does not require a prescription.

**Medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a free clinic.** In order for this exemption to be applicable, the health care clinic must provide both medical care and dental care without charge to all of its patients. (This exemption became effective July 1, 2004.)

**Prescription drugs dispensed to Medicare Part A patients residing in a nursing home.** 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), the medicine must be dispensed to a Medicare Part A patient, and the Medicare Part A patient must be residing in a nursing home. (This exemption became effective July 1, 2007.)

## **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:

**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 purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs, state or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax, and 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. Note: This exemption is being phased-in over several years. At the time this document was published, the reduced tax rate on such durable

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<sup>14</sup> See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009) wherein the Court held that devices that did not replace missing parts of body but only replaced functions did not meet the approved regulatory definition of prosthetic device.

<sup>15</sup> See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009).

medical equipment and related supplies was 5.5% plus any applicable local tax rate.<sup>16</sup>

**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).” Hearing aid batteries and cords are excluded from the definition of “hearing aid;” therefore, sales of these items are not exempt from the tax.

**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;

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<sup>16</sup> 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 15<sup>th</sup> 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 1<sup>st</sup> of next State fiscal year (July 1 through June 30) following the next February 15<sup>th</sup> forecast by the BEA meeting the 5% growth requirement,

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

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

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

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

- (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;
- (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

(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.

7. Are sales of prescription medicines, over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a charitable health care clinic exempt from the sales and use tax?

Sales of prescription medicines, over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a charitable health care clinic are subject to the sales and use tax unless the charitable health care clinic is one that provides both medical care and dental care without charge to all of its patients or unless such prescription medicines are used by the doctor, nursing home, hospital or similar institution (a) to prevent respiratory syncytial virus; (b) in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; (c) to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; or (d) are dispensed to a Medicare Part A patient residing in a nursing home.

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.

### **B. Sales to “Free Clinics:”**

1. Are sales of prescription medicines, 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 both medical care and dental care without charge to all of its patients exempt from the sales and use tax?

Sales of prescription medicines, 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 both medical care and dental care without charge to all of its patients are exempt from the sales and use tax under Code Section 12-36-2120(63).

If the health care clinic does not provide both medical and dental care, or charges any of its patients for its medical care or dental care (or both), then sales of prescription medicines, over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, to the health care clinic are subject to the sales and use tax unless otherwise exempt as discussed in Section C below.

2. Are sales of tangible personal property, other than those listed in Question #1 of this Section B, to a health care clinic that provides both medical care and dental care without charge to all of its patients subject to the sales and use tax?

Yes, unless otherwise exempt under the law.



**C. Sales to Doctors, Nursing Homes, Hospitals and Similar Institutions (Not Discussed in Section “A” or Section “B” 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” (because these transactions do not require prescriptions) 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 (a) to prevent respiratory syncytial virus; (b) in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; (c) to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; or (d) are dispensed to a Medicare Part A patient residing in a nursing home.

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 prescription 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 because sales to these persons do not require a prescription and the medicines are not medicines for which a prescription is required.<sup>17</sup>

Therefore, sales of non-prescription medicines to a doctor, nursing home, hospital or similar institution 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 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 *the device* 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), because sales to these persons or entities do not require a prescription and the formulas are not medicines for which a prescription is required.

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?

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<sup>17</sup> See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009) (“In our opinion, ...the current statutory language-“medicine ... sold by prescription”-clearly evidences a legislative intent that the exemption be only for those medicines requiring a prescription.”)

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 (a) to prevent respiratory syncytial virus; (b) in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; (c) to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; or (d) are dispensed to a Medicare Part A patient residing in a nursing home.

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.

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 unless such medicines are of a type that requires a prescription and are used by the doctor, nursing home, hospital or similar institution (a) to prevent respiratory syncytial virus; (b) in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; (c) to relieve the effects of any such treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; or (d) are dispensed to a Medicare Part A patient residing in a nursing home.

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.

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.

Note: See Section F for information on durable medical equipment.

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 the items are 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.

14. Are sales of prescription medicine to a nursing home for use in treating a Medicare Part A patient who is residing in the nursing home exempt from the sales and use tax?

Yes. Code Section 12-36-2120(28)(f) exempts from the sales and use tax “prescription drugs dispensed to Medicare Part A patients residing in a nursing home.”

**D. Sales to Individuals (Not A Doctor, Nursing Home, Hospital, Clinic 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 (i.e., over-the-counter 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 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
- dresses 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.

Note: See Section F for information on durable medical equipment.

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.

### **E. Medicare and Medicaid:**

1. Are sales at retail of tangible personal property that are reimbursed or paid in whole or part by Medicare or Medicaid considered sales to the federal government?

No. Commission Decision #93-2 held that sales paid for via Medicare or Medicaid are not sales to the federal government.

2. Are sales at retail of tangible personal property, not otherwise exempt as discussed above in Sections “A” through “D,” subject to the sales and use tax if reimbursed or paid in whole or part by Medicare or Medicaid?

Yes, 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. If the vendor is not prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed by Medicare or Medicaid, then the full amount charged the purchaser (“gross proceeds of sales” or “sales price” as defined in Code Sections 12-36-90 and 12-36-130) is subject to the sales and use tax.

### **F. Durable Medical Equipment and Related Supplies**

1. Are sales at retail of durable medical equipment and related supplies exempt from the sales and use tax?

No, however, sales at retail of certain durable medical equipment and related supplies are subject to a lower state tax rate. See Question #2 for more information about this lower state tax rate.

2. What are the requirements that must be met for a sale at retail of durable medical equipment and related supplies to qualify for the lower state tax rate?

In order for the purchase of the durable medical equipment and related supplies **for the lower state tax rate**, the following conditions must be met:

- (a) The durable medical equipment and related supplies must fall within the definitions of durable medical equipment and related supplies under federal and state Medicaid and Medicare laws.
- (b) The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs.
- (c) State or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax.
- (d) 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.

3. If a sale at retail of durable medical equipment and related supplies meets the requirements for the lower state tax rate as outlined in Question #2 above, what is the applicable state tax rate?

At the time of publication of this document, the current state tax rate on sales at retail of durable medical equipment and related supplies meeting the requirements as outlined in Question #2 above is 5.5%.

This lower state tax rate of 5.5% will remain in effect through at least June 30, 2010. The state rate may be lowered further if certain conditions are met. Subsequent state 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 15<sup>th</sup> and if a 5% or more annual general fund growth is forecast, then the state tax rate will be reduced further as follows:

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

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



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

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

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

4. Are sales at retail of durable medical equipment and related supplies that meet the requirements for the lower state tax rate as outlined in Question #2 above subject to local sales and use taxes administered and collected by the Department on behalf of local jurisdictions?

Yes, however, once sales of durable medical equipment and related supplies are fully exempt from the state tax as set forth in Questions #2 and #3 above, such sales will also be exempt from any local sales and use taxes administered and collected by the Department on behalf of local jurisdictions.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens  
Ray N. Stevens, Director

January 12, 2010  
Columbia, South Carolina