Chapter 20

Medicine, Prosthetics and Medical Supplies[1]

A. Exemptions for Medicines, Prosthetic Devices, and Other Medical Supplies

The following exemptions are available with respect to medicines, prosthetic devices and certain other medical supplies:

Medicine sold by prescription.[2] 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.[3] 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 rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.[4] 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.

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[1] See South Carolina Revenue Ruling #11-3.
[2] South Carolina Code §12-36-2120(28)(a). See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009). See also *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 of App., Unpublished Opinion No. 97-UP-447 (1997). (Note, this case dealt with prescription medicines purchased by doctors to treat cancer; however, 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 not available at the time. It was subsequently enacted by the General Assembly in 1998 and became effective on June 28, 1999. (Act 362, Section 2, of 1998))
[3] South Carolina Code §12-36-2120(28)(a).
[4] South Carolina Code §12-36-2120(28)(a).

Prescription medicines *used to relieve the effects of the treatment* of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.[5] 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.[6] 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.[7] 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.[8] 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[9] authorization and direction of a physician.

Disposable medical supplies.[10] 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.

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[5] South Carolina Code §12-36-2120(28)(a).
[6] South Carolina Code §12-36-2120(28)(a).
[7] South Carolina Code §12-36-2120(28)(d).
[8] South Carolina Code §12-36-2120(28)(b).
[9] SC Regulation 117-332. See also *Drummond v. State of South Carolina*, Court of Common Pleas, Case No. 02-CP-40-4651 (2010).
[10] South Carolina Code §12-36-2120(28)(c).

Prosthetic devices sold by prescription.[11] 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.[12] 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.[13]

Dental prosthetic devices.[14] 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.[15] The sale does not require a prescription.

Prescription drugs – Medicare Part A Nursing Home Patient.[16] 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. It must be sold to a nursing home to be dispensed to a Medicare Part A patient residing in the nursing home.

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.[17] In order for this exemption to be applicable, the medicine (whether prescription or over-the-counter) and medical supplies must be sold a health care clinic, the clinic must provide both medical and dental care, and the care must be provided without charge to all patients.

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

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[11] South Carolina Code §12-36-2120(28)(a).
[12] 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.
[13] See *CareAlliance Health Services v. South Carolina Department of Revenue*, 416 S.C. 484, 787 S.E.2d 475 (2016) (holding that sales of orthopaedic prosthetic devices by a vendor to a hospital are not exempt from sales and use tax under South Carolina Code §12-36-2120(28) because such sales do not require a prescription), *rehearing denied*, (July 14, 2016), *on remand*, 12-ALJ-17-0405-AP (Nov. 2, 2016) (order dismissing only remaining legal issue of whether blood derivatives are subject to sales and use taxes).
[14] South Carolina Code §12-36-2120(28)(e).
[15] See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009).
[16] South Carolina Code §12-36-2120(28)(f).
[17] South Carolina Code §12-36-2120(63).

provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina. Note: Effective January 1, 2013, sales meeting the requirements of this exemption are fully exempt from both state and local sales and use taxes.[18]

Injectable Medications and Injectable Biologics. In order for this exemption to be applicable, the medication or biologic must be administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility.

This exemption was to be phased-in depending upon the forecasts of annual general fund revenue growth as determined by the Board of Economic Advisors. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements had been met to implement this exemption.[19]

Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases were exempt from the State and local sales and use taxes. On July 1, 2015, qualifying sales or purchases became fully exempt from the State and local sales and use taxes.

Viscosupplementation therapies. This exemption was enacted through a temporary proviso in the budget for State Fiscal Year 2019 - 2020 (July 1, 2019 - June 30, 2020), unless reenacted by the General Assembly in the next legislative session. See Act No. 91 of 2019, Part IB, Proviso 117.60.

B. Other Relevant Exemptions

The statute also provides several other exemptions that may or may not apply.

[18] An uncodified provision of the legislation that enacted this exemption in 2007 provided that the exemption would be phased in by reducing the rate of tax based on revenue projections by the Board of Economic Advisors. This uncodified provision was later amended in Act 32 of 2011 to establish a new phase in of the exemption as follows: The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is five and one-half percent for such sales from July 1, 2007. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is three and one-half percent for such sales from July 1, 2011. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is one and three-quarters percent for such sales from July 1, 2012. Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items meeting the requirements of South Carolina Code §12-36-2120(74) is fully implemented. Local sales and use taxes will continue to apply until the exemption is fully implemented. Once the exemption is fully implemented, sales meeting the requirements of the exemption will be fully exempt from both state and local sales and use taxes.

[19] SC Information Letter #14-4.

Sales to the federal government. South Carolina Code §12-36-2120(2) exempts sales of "tangible personal property…to the federal government." SC Commission Decision #93-2 held that sales paid for via Medicare or Medicaid are not sales to the federal government.

Sales to charitable hospitals. South Carolina Code §12-36-2120(47) exempts sales of tangible personal property to charitable hospitals that are exempt from property taxation under South Carolina Code §12-37-220; predominantly serve children; and where the care is provided without charge to the patient.

Sales of hearing aids. South Carolina Code §12-36-2120(38) exempts sales of "hearing aids, as defined by South Carolina Code §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. South Carolina Code §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;
(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.