



THE STATE OF GEORGIA

EXECUTIVE ORDER

BY THE GOVERNOR:

- WHEREAS:** Pursuant to O.C.G.A. § 48-8-3(47), Georgia does not tax the retail sale of drugs dispensed by prescription; and
- WHEREAS:** The Georgia Court of Appeals ruled in the 2001 decision of *Ciba Vision Corporation v. Jackson*, that contact lenses – which are available only after a valid prescription – are taxable to the manufacturer or distributor when distributed by them as free samples; and
- WHEREAS:** In proposed rule 560-12-1-.14(a), the Department of Revenue correctly interpreted the *Ciba Vision* case and Code Section 48-8-3(47) as requiring the imposition of a sales and use tax on pharmaceutical and prescription drug samples distributed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia, by manufacturers or distributors, whether manufactured inside or outside Georgia; and
- WHEREAS:** The Department of Revenue's task to enforce the law as written by the General Assembly and interpreted by the judicial branch is distinct from the policymaking functions of the Governor; and
- WHEREAS:** Pharmaceutical samples provide a no-cost option for some Georgians to obtain medications necessary to maintain their health and sustain their lives; and
- WHEREAS:** Pharmaceutical medications used in clinical trials are often provided without cost; and
- WHEREAS:** It is in the best interests of Georgians to exempt from sales and use taxes pharmaceutical medications that are distributed without cost for several reasons, including: (1) the ability to distribute needed medicines to persons that might not otherwise be able to afford them; (2) the attraction of clinical trials to Georgia for the betterment of the health of Georgians and to continue the State's place as a leader in cutting-edge health research; and (3) the elimination of an inconsistency in the law whereby pharmaceutical medicines that are sold at retail are not taxed, however those that are distributed for free are subject to taxation; and

WHEREAS: Georgia law authorizes the Governor to suspend the collection of taxes, or any part thereof, due the state until the meeting of the next General Assembly; and

WHEREAS: Under these circumstances relief to the taxpayers of Georgia is warranted.

NOW, THEREFORE, PURSUANT TO THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA AND BY SECTION 45-12-22 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED, IT IS HEREBY

ORDERED: That the collection of sales and use tax on those controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensable by prescription for the treatment of natural persons, which is imposed on their distribution without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor, be suspended on all such distribution occurring immediately following the last moment of August 31, 2008, until the General Assembly acts upon this Order.

IT IS FURTHER

ORDERED: That the collection of sales and use tax on controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensed without charge for the purposes of a clinical trial approved by an institutional review board, which has been accredited by the Association for the Accreditation of Human Research Protection Programs, be suspended on all such distribution occurring immediately following the last moment of August 31, 2008, until the General Assembly acts upon this Order.

This 29th day of August, 2008.


GOVERNOR