

Written testimony of Jason Canzano, Board Member of HOMES and Managing Director of Acelleron Medical Products, Relative to LD 1184 - An Act to Exempt Certain Prescribed Home Medical Supplies from Sales Tax

April 26, 2023

Dear Taxation Committee Members,

My name is Jason Canzano, Board Member of the Home Medical Equipment and Services Association of New England (“HOMES”) and Managing Director of Acelleron Medical Products (“Acelleron”). HOMES is the New England trade association representing providers of durable/home medical equipment (“HME”). HOMES represents HME providers in Maine and all the other New England states.

Acelleron is a MaineCare and commercial health insurance provider that provides breastfeeding equipment and supplies as well as other maternal health products such as blood pressure monitors, pregnancy back braces, and compression socks, along with pediatric nebulizers to families throughout Maine. We are one of the leading experts in our space because we combine experience, technology, clinical expertise, product knowledge, and patient data to improve maternal health and pediatric respiratory outcomes. Last year we served over 5,000 families throughout the great state of Maine. We expect to serve close to 6,000 families this year. We are a key provider to both Maine Health and Northern Light health systems.

Thank you for the opportunity to comment on LD 1184, an act to exempt certain prescribed home medical supplies from sales tax. This bill should provide sales and use tax exemption for medical equipment and supplies prescribed by a health care provider for medical purposes when payment is made by an insurance company or specified government program such as Medicare or Medicaid.

Prescribed medical equipment is essential for individuals who require it for managing their health conditions. Just as **Maine does not tax the medication for medical conditions**, Maine **should not tax the equipment** needed to manage those conditions.

Maine Sales Tax Law

Under current law, sales of prescribed breastfeeding equipment, nebulizers, blood pressure monitors, compression socks, and many more types of medical equipment and supplies are subject to the sales and use tax when billed to a health insurance company, Medicare, and MaineCare. **This means HME providers are paying a consumer sales tax on prescribed medical equipment and supplies.** In essence, **this is a tax on HME providers who are critical** to improving patient outcomes, reducing hospitalization stays, and lowering health care costs.



In addition, there is a significant administrative burden on HME providers to calculate and remit sales tax. We are not traditional retail businesses that charge and collect sales tax from a consumer when they come in to purchase a product. We are a health care provider that supplies medical equipment to patients in need. We submit an insurance claim to the patient's insurance company, Medicare or Medicaid for the equipment. Therefore, we need to manually pull out all the claims out of our billing system each month, then remove claims that are not subject to sales tax, then calculate the sales tax based on the insurance allowable amounts. This is very tedious and time consuming process.

Lastly, there are similar exemptions in the state of Maine that supports why this change should be made. In the Maine Revenue Services Sales, Fuel, & Special Tax Division Instructional Bulletin NO. 41 (*See Appendix A*), **prescription medicines**, **prosthetic or orthotic devices**, **crutches** and **wheelchairs**, **diabetic supplies**, **positive airway pressure** and **oxygen delivery equipment and supplies**, and **certain adaptive equipment** are exempt from sales and use tax.

All this being said, we urge you to exempt sales and use tax on prescribed medical equipment billed to health insurance plans and MaineCare. It is the right thing to do. It can help ensure that Maine residents have access to the healthcare they need, improve outcomes, and demonstrate Maine's commitment to the well-being of its residents.

Thank you so very much for your time.

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Appendix A



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 41

MEDICINES, MEDICAL EQUIPMENT, AND PROSTHETIC DEVICES

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by taxpayers with respect to sales of medicines, medical equipment, and prosthetic devices.

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services ("MRS") do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of Title 36 of the Maine Revised Statutes ("M.R.S."). Title 36, MRS rules, instructional bulletins and affidavits referenced in this bulletin may be viewed on the MRS website, www.maine.gov/revenue.

This bulletin relates to sales of medicines, medical equipment, and prosthetic devices to the consumer of those products. For information on sales to exempt organizations or governmental agencies, see Rule 302 ("Sales to Governmental Agencies and Exempt Organizations") and Instructional Bulletin No. 36 ("Exempt Organizations and Government Agencies").

1. PRESCRIPTION MEDICINES

Sales of medicines for human beings that are sold on a doctor's prescription are exempt from sales tax. See 36 M.R.S. § 1760(5). "Medicines" means antibiotics, analgesics, antipyretics, stimulants, sedatives, antitoxins, anesthetics, antipruritics, hormones, antihistamines, certain "dermal fillers" (such as BoTox®), injectable contrast agents, vitamins, oxygen, vaccines, and other substances that are used in the prevention, diagnosis, or treatment of disease or injury and that either (1) require a prescription in order to be purchased or administered to the retail consumer or patient; or (2) are sold in packaging that contains a U.S. Food and Drug Administration OTC Drug Facts Label.

"Sold on a doctor's prescription" means either (1) that a medical professional authorized by law to prescribe medicines for human beings dispensed or administered the medicine or (2) that a licensed pharmacist sold the medicine in accordance with a prescription issued by a medical professional authorized by law to prescribe medicines for human beings. Sales of medicines originally prescribed by a doctor on a refillable prescription are exempt when the prescription is refilled.

Bandages, dressings, sutures, swabs, hypodermics, diagnostic test kits, instruments, and similar items that may be used in the diagnosis and treatment of injury or disease are not medicines and are subject to tax when sold to any non-exempt purchaser; this is true even when the bandage, dressing, or similar item contains medication. An "over-the-counter" drug that is not sold on a doctor's prescription is taxable, even if the drug is purchased on the advice or recommendation of a physician. There is no tax on nonprescription medicines purchased by a doctor for use in the doctor's medical practice. Sales of items used only in the diagnosis or treatment of diabetes are exempt. See Section 5, "Diabetic Supplies," of this bulletin.

2. MARIJUANA

Sales of marijuana do not qualify for exemption, even if they are made by a registered dispensary or registered caregiver under the Maine Medical Marijuana Act.

3. PROSTHETIC OR ORTHOTIC DEVICES

Sales of prosthetic or orthotic devices are exempt from sales tax when sold by means of an order issued by a health care practitioner as defined in 24 M.R.S. § 2502(1-A) who is licensed under Title 32. See 36 M.R.S. § 1760(5-A). "Prosthetic or orthotic device" means a replacement, corrective, or supportive device, including repair and replacement parts for such device, worn on, in, or next to the human body to:

- Artificially replace a missing portion of the body;
- Prevent or correct a physical deformity or malfunction; or
- Support a weak or deformed portion of the body.

The term "prosthetic or orthotic device" includes, but is not limited to, artificial limbs and eyes, hearing aids, eyeglasses and contact lenses, ostomy appliances, enteral feeding devices, dentures, crowns, caps and materials used in the repair or replacement of teeth such as dental amalgam and cement, and cardiac pacemakers. The exemption does not cover mouth guards, even if they are custom-made from an impression of an individual's teeth.

Sales of non-corrective safety glasses, sport glasses and goggles, non-corrective sunglasses, opera glasses, magnifying glasses, platform magnifiers, non-corrective contact lenses, and similar items are not covered by this exemption. Sales of cleaning solutions and supplies for contact lenses and eyeglasses are likewise not covered by this exemption.

Sales of items ordinarily worn for cosmetic purposes, such as wigs, false eyelashes and makeup, are not covered by this exemption whether or not the need for them results from a medical condition.

4. CRUTCHES AND WHEELCHAIRS

Crutches and wheelchairs, including repair and replacement parts, sold for the use of sick, injured, or disabled persons (and not for rental) are exempt from sales tax. See 36 M.R.S. § 1760(5-A)(B). "Crutches" include canes and walkers. Certain electric scooters and power chairs (but not "lift chairs" or Hoyer lifts) fall within the classification of "wheelchairs" when they are designed and used to provide or increase the ability of a sick, injured, or disabled person to move from one place to another.

Sales of other items purchased to alleviate or compensate for impaired mobility are not covered by this exemption, including wheelchair lifts, motor vehicles that have been modified to make them operable by handicapped persons, and materials used in the construction of wheelchair ramps or other alterations to real property to make it accessible to handicapped persons. Sales of certain adaptive equipment for motor vehicles may be exempt under 36 M.R.S. § 1760(95). See Section 8, "Certain Adaptive Equipment," of this bulletin.

Purchases of any of the above items for rental are not exempt from sales tax.

5. DIABETIC SUPPLIES

Sales of all equipment and supplies used in the diagnosis or treatment of human diabetes are exempt from sales tax. This includes sales of insulin, antidiabetic drugs, diabetes testing supplies, and other items used only in the treatment of diabetes. See 36 M.R.S. § 1760(33).

Note: Prior to November 1, 2017, the exemption for equipment and supplies used in the diagnosis or treatment of diabetes was not limited solely to human diabetes.

The retailer must retain written evidence that a purchaser has been diagnosed as diabetic when purchasing items that are not used solely in the diagnosis or treatment of diabetes, such as shoes, shoe inserts, compression socks, and hypodermic syringes and needles. The written evidence may be a written statement from a doctor that the purchaser has been diagnosed as diabetic, and that the items being purchased are to be used in the treatment of his or her diabetes.

6. SEEING EYE DOGS

Sales of tangible personal property and taxable services essential for the care and maintenance of seeing eye dogs used to aid any blind person are exempt from sales tax. See 36 M.R.S. § 1760(35).

Sales of dog food, veterinary medicines and supplies, and other items ordinarily used in the care and maintenance of domestic dogs will be presumed to qualify for this exemption when sold for use by a blind person who has a seeing eye dog. The retailer must maintain records of exempt sales of tangible personal property for a seeing eye dog and must have as a part of that record the name and address of the blind person who owns the seeing eye dog.

7. POSITIVE AIRWAY PRESSURE AND OXYGEN DELIVERY EQUIPMENT AND SUPPLIES

Sales of positive airway pressure ("PAP") equipment and supplies and oxygen delivery equipment sold or leased for personal use are exempt from sales tax. See 36 M.R.S. § 1760(94). "PAP equipment and supplies" means *continuous* and *bi-level* PAP equipment and supplies, and repair and replacement parts for such equipment, used in respiratory ventilation. "Oxygen delivery equipment" means oxygen concentrators, regulators, compressors, humidifiers, masks and cannulas. "Personal use" means for use in a person's home, as opposed to use by a business, such as a doctor's office. A person engaged in the business of renting or leasing PAP equipment may purchase PAP equipment exempt from tax if the person rents or leases the equipment to its customers for those customers' personal use.

8. CERTAIN ADAPTIVE EQUIPMENT

Sales of adaptive equipment for installation in or on a motor vehicle to make that vehicle operable or accessible by a person with a disability are exempt from sales tax. See 36 M.R.S. § 1760(95). To qualify for the exemption, the purchase must have been made by a person, or at the request of a person, who has been issued a disability plate or placard by the Secretary of State pursuant to 29-A M.R.S. § 521.

The exemption applies only to the sale of adaptive equipment to be installed in or on a motor vehicle. The exemption does not apply to the sale of a motor vehicle that will be or has been modified with adaptive equipment.

Purchasers of such equipment must provide an "Affidavit for Purchase of Adaptive Equipment" (ST-A-124) to the retailer to document the transaction as exempt.

9. THIRD-PARTY PAYMENTS

Payment for medicines, medical equipment, and prosthetic or orthotic devices is often received from a party other than the consumer of the goods. The third-party payer may be an insurance company, a state agency, a municipality, or Medicare/Medicaid. Even though the third-party payer may be an organization that is exempt from sales tax, the transaction is a sale to the consumer, not to the exempt organization. If the transaction is otherwise taxable, sales tax applies even when billed to the exempt organization.