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South Carolina: Durable medical equipment sales and use tax exemption prospectively invalidated (Supreme Court decision)

The South Carolina Supreme Court affirmed a lower court's decision holding that the state's durable medical equipment sales and use tax exemption discriminated against interstate commerce in violation of the Commerce Clause. In addition to approving refunds for the specific taxpayer that had challenged the exemption, the court declined to sever the unconstitutional language from the exemption, and instead invalidated the entire exemption on a prospective basis. As a result, the exemption is no longer available to any taxpayer.

Background

The sales and use tax exemption at issue applied to “durable medical equipment and related supplies (a) as defined under federal and state Medicaid and Medicare laws; (b) which is paid directly by funds of this State or the United States under the Medicaid or Medicare programs, where state or federal law or regulation authorizing the payment prohibits the payment of the sale or use tax; and (c) sold by a provider who holds a South Carolina retail sales license and **whose principal place of business is located in this State** [emphasis added].”

Previously a South Carolina circuit court found that the exemption discriminated against interstate commerce. The taxpayer, a seller of medical devices with a principal place of business in Texas, sold durable medical equipment and related supplies to customers in South Carolina. The taxpayer filed a claim in South Carolina state court seeking declaratory relief that the exemption violated the Commerce Clause. The state court found that the facts were undisputed, the exemption was facially discriminatory, and the taxpayer had been disqualified for the exemption only because the taxpayer's principal place of business was not in South Carolina. The court applied the doctrine of severability to determine that the exemption should be available to all sellers who qualify for the exemption, regardless of their principal place of business.

Supreme Court decision

In the state Supreme Court decision, the court agreed that the exemption had both a discriminatory effect and purpose, and that the Department of Revenue had failed to show that the exemption advanced a legitimate

local purpose that could not be adequately served by reasonable nondiscriminatory alternatives. Although the court found that only the portion of the exemption that required a seller's principal place of business to be in-state in order to receive the exemption to be unconstitutional, the court also found that the Department of Revenue could not show that this portion of the statute was independent and severable from the remainder of the statute. Therefore, the court found the entire exemption to be invalid on a prospective basis, and suggested that the legislature could reenact the exemption without the unconstitutional language if the legislature found such action to be appropriate. The court also affirmed the circuit court's decision to order refunds to the taxpayer.

Next steps

Taxpayers that have remitted sales tax to South Carolina for sales of qualifying equipment and supplies may wish to file refund claims in South Carolina for prior periods open under the statute of limitations. In addition, taxpayers that have relied on this exemption are advised that the exemption is now void.

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