

Gov. Perdue Suspends Sales Tax On Free Samples of Prescriptions

ATLANTA (September 3, 2008) – Georgia Bio applauds Governor Sonny Perdue for issuing an executive order suspending sales tax collections by the Department of Revenue for prescription drugs distributed as free samples, including investigational products used in clinical trials.

Governor Perdue, in a press release announcing his executive order, pledged to work with the Georgia General Assembly in 2009 to make the suspension permanent.

Georgia Bio President Charles Craig said the organization supported Governor Perdue's efforts and looks forward to working with him and the General Assembly on this critically important issue. Georgia Bio member companies conduct thousands of clinical trials in Georgia and distribute free samples of prescription drugs through health clinics and other programs that assist the elderly and uninsured. Applying such a tax in Georgia jeopardizes continuation of clinical trials and these other programs, threatening Georgians access to the latest life-saving medicines.

Georgia Bio is the private, non-profit organization representing the life sciences industry. The association's 300 members include pharmaceutical, biotechnology and medical device companies, universities and research institutes, government groups and other organizations involved in the research and development of life sciences-related products that improve healthcare, agriculture, and industrial and energy production.

Below is the full text of Governor Perdue's press release and executive order.



STATE OF GEORGIA

OFFICE OF THE GOVERNOR

Sonny Perdue
GOVERNOR

For Immediate Release
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Friday, August 29, 2008
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Governor Perdue suspends collection of taxes on prescriptions distributed as free samples

ATLANTA – Governor Sonny Perdue issued an Executive Order today suspending the collection of taxes on prescriptions that are distributed to health clinics and patients as free samples. A Court of Appeals ruling requiring the Department of Revenue to continue to collect these taxes, even though the sales of prescription drugs are not taxed, unfairly impacts patients at health clinics and doctor's offices who receive free samples as part of filling their prescriptions.

“Collecting taxes on free samples is inconsistent with the state’s preference to exempt the sales of prescription drugs from being taxed,” said Governor Sonny Perdue. “Any system that would tax distribution of free samples but exempt sales of the same product just simply does not make sense, and disproportionately affects lower-income Georgians that rely on these free samples as part of their supply of medicines.”

Governor Perdue also expressed concern about samples that are provided for clinical trials.

“As a state that is aggressively marketing our strengths to the life sciences industry, taxing these samples used in clinical trials puts us at a disadvantage in attracting research and development activities to Georgia,” Governor Perdue said.

Thirty-seven states around the country exempt the collection of taxes on free samples of prescriptions.

State law allows the Governor the authority to suspend collection of any tax until the next meeting of the Georgia General Assembly. Governor Perdue will work with the General Assembly in 2009 to make this suspension permanent.

Text of the Executive Order is provided below:

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.

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