

PRESCRIPTION DRUGS

Notice #07-18

Sales and Use Tax

December 2007



Highlights

- January 1, 2008 new definitions are adopted

- Prescription drugs for human use continue to be exempt

- Drug is defined in T.C.A. § 67-6-102

- No substantial changes for Tennessee

- Prescription is defined in T.C.A. § 67-6-102

INTRODUCTION

This notice is intended to provide taxpayers and the general public with information concerning Public Chapter 602, Acts of 2007, which makes changes to Tennessee sales and use tax laws to adopt new definitions for drugs that are in compliance with the Streamlined Sales and Use Tax Agreement.

Effective January 1, 2008, Tennessee has adopted definitions for the following terms: drug, over-the-counter drug, grooming and hygiene products, and prescription. Previously, Tennessee statutes did not define these terms.

DISCUSSION

Drugs for use by humans, dispensed pursuant to a prescription, continue to be exempt from sales and use tax pursuant to Tenn. Code Ann. § 67-6-320.

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or function of the body.

This definition does not represent a substantial change for Tennessee. Tennessee *did not* previously consider food, dietary supplements, or alcoholic beverages as drugs.

Prescriptions

Drugs are exempt from sales and use tax only if dispensed pursuant to a prescription. The definition of prescription includes orders written by a duly licensed practitioner on a patient’s chart.

“Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

➤ *Over-the-counter drugs are exempt if for human use and dispensed pursuant to a prescription. T.C.A. § 67-6-320(a)*

➤ *Documentation of prescription must be maintained*

➤ *Over-the-counter drug is defined in T.C.A. § 67-6-102*

➤ *Grooming and hygiene products are exempt only if a prescription is required for purchase and the product does not contain a drug facts panel nor a statement of active ingredients*

➤ *Dietary supplements are not exempt*

➤ *Insulin and syringes used to dispense insulin are exempt*

➤ *Insulin-testing strips are not exempt*

Over-the-Counter Drugs

Over-the-counter drugs are exempt from sales and use tax if for human use and dispensed pursuant to a prescription. Since over-the-counter drugs can be purchased without a prescription, sellers are cautioned to keep documentation to support exempt sales of such drugs for human use dispensed pursuant to a prescription. Sellers will be liable for tax where there is no documentation to support the exemption from tax on such sales.

"Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. section 201.66. The "over-the-counter drug" label includes:

(A) A drug facts panel; or

(B) A statement of the active ingredients with a list of those ingredients contained in the compound, substance or preparation.

"Over-the-counter-drug" does not include grooming and hygiene products.

Grooming and Hygiene Products

The following grooming and hygiene products do not qualify as over-the-counter drugs regardless of whether they contain a drug facts panel or a statement of active ingredients:

Soaps	Mouthwashes	Sunscreens	Suntan lotions
Shampoos	Toothpastes	Antiperspirants	Cleaning solutions

Cleaning solutions include such products as face washes, exfoliates, and scrubs. Soaps include bars, liquids, body washes, and powders.

These grooming and hygiene products are generally subject to sales and use tax even if sold pursuant to a prescription. However, such products sold pursuant to a prescription for human use are exempt from sales and use tax if the products:

- 1) Are legend drugs (drugs that by law can only be purchased with a prescription); and
- 2) Do not contain labeling with a drug facts panel or statement of active ingredients

Dietary Supplements

Dietary supplements, such as vitamins and minerals, are not drugs and, therefore, are subject to sales and use tax. Dietary supplements are required to be labeled pursuant to Code of Federal Regulations, title 21, section 101.36, identifiable by the "Supplement Facts" box found on the label.

Insulin

While insulin is considered a drug, the statute continues to provide an exemption from tax for the sale of insulin without a prescription. Syringes used to dispense insulin continue to be exempt from sales and use tax. Insulin-testing strips are not exempt from tax. Tenn. Code Ann. §§67-6-314(7) and 67-6-320(b)(1).

➤ *Oxygen and equipment and disposable medical supplies used to deliver oxygen continue to be exempt*

Oxygen

Tennessee statutes continue to provide that the sale or use of oxygen prescribed for the medical treatment of a human being by a licensed practitioner of the healing arts is exempt from tax. Equipment and disposable medical supplies necessary to administer or deliver medical oxygen to a human continue to be exempt from sales and use tax. Tenn. Code Ann. §§67-6-314(3) and 67-6-320(b)(2).

➤ *Certain specific disposable medical supplies are exempt*

Medical Supplies

Disposable medical supplies such as bags, tubing, needles and syringes for the intravenous administration of any prescription drug or medicine, used in the treatment of a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center continues to be exempt from sales and use tax.

The bags, tubing, needles and syringes must:

- 1) come in direct contact with the prescription drug; and
- 2) be dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state to qualify for the tax exemption

➤ *Pharmaceutical samples continue to be exempt*

Drug Samples

Drug samples produced in this state for distribution outside of the state continue to be exempt from sales and use tax. Prescription drugs distributed free of charge by the manufacturer continue to be exempt from sales and use tax. Tenn. Code Ann. § 67-6-319.

➤ *Documentation is required*

Documenting Exempt Sales

Sellers are required to maintain information in their books and records to document tax exempt sales. For drugs sold pursuant to a prescription, sellers must maintain evidence or information the purchase was made with a prescription from a licensed practitioner. Sellers are required to supply such information to substantiate tax exempt sales. It is not necessary and not required for sellers to obtain an exemption certificate from purchasers presenting a prescription.



References:

PC 602 (2007)
T.C.A. § 67-6-102
T.C.A. § 67-6-314
T.C.A. § 67-6-319
T.C.A. § 67-6-320

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.