

the merchandise using a credit card. The partial sales tax exemption does not apply to this transaction because the purchaser did not place the order in person or pick up the goods at the seller's location in the zone. The seller must collect tax at the full rate.

(h) The partial sales tax exemption applies to handling, packing, shipping, and other delivery charges associated with a taxable sales transaction that is eligible for the partial sales tax exemption. Separately stating such delivery charges on the invoice has no effect on taxability.

Example: A customer makes an in-store retail purchase of office supplies from a certified seller. The seller ships the items directly from its inventory to a location outside of a UEZ, but within New Jersey, as designated by the purchaser. The customer's invoice is stated as follows:

Pens	\$30.00
Paperclips	\$20.00
15 Clipboards	\$150.00
Office supplies total.....	\$200.00
Shipping and handling.....	\$8.00
Total taxable receipt	\$208.00
N.J. sales tax @ 3.5%.....	\$7.28

The partial sales tax exemption applies to this entire transaction (that is, merchandise and the shipping and handling charges) because the purchaser placed the order in-person and delivery was made directly from the seller's location in the zone where the purchase was made. The charge for shipping and handling follows the taxability of the items being sold, as part of the taxable receipt.

18:24-31.5 No partial sales tax exemption for [retail sales of] taxable services and other retail sales by a [qualifying business] certified seller

[The Urban Enterprise Zones Act in Section 21 provides for an exemption to the extent of 50 percent of the statutory rate of sales and use tax on retail sales (other than motor vehicles, cigarettes, alcoholic beverages, energy, and manufacturing machinery, equipment or apparatus) by a certified vendor which is a qualified business. The statute does not provide for any full or partial exemption on the sale or furnishing of taxable services.]

(a) The partial sales tax exemption (50 percent of the statutory rate of sales and use tax) only applies to the retail sales of tangible personal property by a certified seller with some exceptions, as described in N.J.A.C. 18:24-31.4.

1. Examples of taxable services that are not eligible for the partial sales tax exemption include, but are not limited to:

- i. Furnishing of storage space;
- ii. Information services;
- iii. Body massage;
- iv. Tanning;
- v. Tattooing;
- vi. Limousine services;
- vii. Motor vehicle repairs;
- viii. Landscaping;
- ix. Security and investigation services;
- x. Garbage removal and sewer services;
- xi. Floor covering installation; and
- xii. Laundering and dry cleaning of non-clothing.

2. Examples of retail sales that are not eligible for the partial sales tax exemption because they are not considered to be sales of tangible personal property include, but are not limited to:

- i. Prepared food and beverages;
- ii. Admissions;
- iii. Membership fees for access to or use of the property or facilities of a health and fitness, athletic, sporting, or shopping club or organization; and
- iv. Parking.

18:24-31.6 Exemptions for retail sales of building materials to or for a qualified business

(a) [Section 31 of the Act] N.J.S.A. 54:32B-8.22 provides an exemption from sales and use tax on sales of materials, supplies, or services to contractors or repairmen for exclusive use in erecting

structures, or building on, or otherwise improving, altering, or repairing real property of a qualified business within an enterprise zone. See N.J.A.C. 18:24-5.3.

(b) Purchasers of materials, supplies, or services to be used for construction, alteration, and repair of structures and realty of a qualified business[es] within an enterprise zone shall furnish to their sellers or suppliers a [properly] fully completed [UZ-4,] Contractor's Exempt Purchase Certificate, Urban Enterprise Zone (Form UZ-4).

(c) The benefits set forth in this section are [unavailable for] not available to qualified businesses within a UEZ-impacted [business] district.

(a)

DIVISION OF TAXATION

**Sales and Use Tax
Medical**

Proposed New Rules: N.J.A.C. 18:24-37

Authorized By: Michael J. Bryan, Director, Division of Taxation.
Authority: N.J.S.A. 54:32B-24 and 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-153.

Submit written comments by November 14, 2014, to:

Mitchell Smith
Administrative Practice Officer
Division of Taxation
50 Barrack Street
PO Box 269
Trenton, NJ 08695-0269
Email: tax_rulemakingcomments@treas.state.nj.us

The agency proposal follows:

Summary

Proposed new N.J.A.C. 18:24-37 provides clarification of N.J.S.A. 54:32B-8.1, which provides a sales and use tax exemption for drugs and certain medical equipment for human use. The Division has determined that the addition of this subchapter is necessary to provide the medical industry and consumers further clarification of N.J.S.A. 54:32B-8.1. This subchapter provides guidance as to what type of tangible personal property falls within the medical exemption for purposes of properly applying the Sales and Use Tax Act.

Following is a summary of each section of the new subchapter:

N.J.A.C. 18:24-37.1, Scope, sets forth the scope of the subchapter.

N.J.A.C. 18:24-37.2, Definitions, provides definitions of the following terms: drug, durable medical equipment, grooming and hygiene product, home-use, medical purpose, mobility enhancing equipment, over-the-counter-drug, prescription, prosthetic device, and sold pursuant to a doctor's prescription.

N.J.A.C. 18:24-37.3, Drugs and over-the-counter drugs, describes the exemption for drugs sold pursuant to a doctor's prescription and over-the-counter drugs and provides examples of exempt items.

N.J.A.C. 18:24-37.4, Grooming and hygiene products, states that grooming and hygiene products are subject to tax and provides examples of taxable items.

N.J.A.C. 18:24-37.5, Durable medical equipment, describes the exemption provided for durable medical equipment for home use and provides examples of exempt items.

N.J.A.C. 18:24-37.6, Mobility enhancing equipment, describes the exemption provided for mobility enhancing equipment sold pursuant to prescription and provides examples of exempt items.

N.J.A.C. 18:24-37.7, Prosthetic devices, describes the exemption provided for prosthetic devices and provides examples of exempt items.

N.J.A.C. 18:24-37.8, Other statutory exemptions, explains that sales of the following are exempt from sales tax: diabetic supplies, tampons and like products, medical oxygen, and human blood and its derivatives.

N.J.A.C. 18:24-37.9, Purchases by medical service providers, states that the purchase of supplies are subject to tax when purchased for use in providing medical services for compensation and not transferred to the purchaser of the service.

N.J.A.C. 18:24-37.10, Purchases or reimbursement of property by Medicaid or Medicare, explains the taxability of property purchased or reimbursed by the Federal government.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Sales and Use Tax rules were adopted to provide sellers and purchasers with guidance and assistance in the administration and implementation of the Sales and Use Tax Act. The proposed new rules have a beneficial social impact on taxpayers because the rules simplify the procedures for compliance by providing guidance regarding the type of tangible personal property that qualifies for exemption. The proposed new rules will, therefore, facilitate public compliance by clarifying the Division's administration of the exemption.

Economic Impact

Enactment of the proposed new subchapter would generally be revenue neutral since it is clarifying a statutory exemption set forth in the Sales and Use Tax Act. In the long term, the proposed new rules will protect the current sales tax base and will result in increased ability to collect sales tax that is due to the State, since taxpayer compliance will be facilitated by explaining statutory definitions and exemptions.

Federal Standards Statement

The rulemaking authority is based on N.J.S.A. 54:32B-24 of the New Jersey Sales and Use Tax Act. There are no Federal regulatory requirements or standards that affect this rulemaking. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Division does not anticipate that jobs will be generated or lost as the result of the new proposed rules.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new subchapter will have a positive effect in clarifying the definitions and exemptions related to drugs and certain medical equipment. The proposed new rules will not require any additional reporting, recordkeeping, or compliance requirements beyond those already in place. The Sales and Use Tax Act applies to all sellers of tangible personal property and services. Therefore, all businesses have the same duties whether or not they are a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any exemption for small businesses would not be in compliance with the statute.

Housing Affordability Impact Analysis

The proposed new subchapter will not result in a change in the average costs associated with housing. The proposed new rules have no impact on any aspect of housing because they deal with sales and use taxation.

Smart Growth Development Impact Analysis

The proposed new subchapter will have no impact on smart growth and will not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed subchapter has nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed new subchapter only deals with sales and use taxation.

Full text of the proposed new rules follows:

SUBCHAPTER 37. MEDICAL

18:24-37.1 Scope of subchapter

This subchapter provides guidance as to the scope of N.J.S.A. 54:32B-8.1 of the Sales and Use Tax Act, which provides an exemption for drugs and certain medical equipment for human use.

18:24-37.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“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 that is:

1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of these publications;

2. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

3. Intended to affect the structure or any function of the body.

“Durable medical equipment” means equipment, including repair and replacement parts, but not including mobility enhancing equipment, that:

1. Can withstand repeated use;

2. Is primarily and customarily used to serve a medical purpose;

3. Is generally not useful to a person in the absence of illness or injury; and

4. Is not worn in or on the body.

“Grooming and hygiene product” means a soap or cleaning solution, shampoo, toothpaste, mouthwash, anti-perspirant, or sun tan lotion or screen, regardless of whether the item meets the definition of “over-the-counter drug.”

“Home use” means that the equipment is sold to an individual for use where the individual resides. This may include residential facilities, such as a nursing home, assisted care center, or school dormitory.

“Medical purpose” means that the equipment is used for the diagnosis, treatment, or cure of disease, illness, or injury.

“Mobility enhancing equipment” means equipment, including repair and replacement parts, other than durable medical equipment, that:

1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either at home or in a motor vehicle;

2. Is not generally used by persons with normal mobility; and

3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

“Over-the-counter drug” means a drug that contains a label that identifies the product as a drug, as required by 21 CFR 201.66. The label must include:

1. A “Drug Facts” panel; or

2. A statement of the “active ingredient” or “active ingredients” with a list of those ingredients contained in the compound, substance, or preparation. “Over-the-counter drug” does not include a grooming and hygiene product.

“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.

“Prosthetic device” means a replacement, corrective, or supportive device, including repair and replacement parts for same, worn on or in the body in order to:

1. Artificially replace a missing portion of the body;

2. Prevent or correct a physical deformity or malfunction; or

3. Support a weak or deformed portion of the body.

“Sold pursuant to a doctor’s prescription” means that a prescription is required in order to purchase the product.

18:24-37.3 Drugs and over-the-counter-drugs

(a) Sales of drugs sold pursuant to a doctor’s prescription for human use and over-the-counter-drugs when sold for human use are exempt from sales and use tax. In order to determine if an over-the-counter product is an exempt over-the-counter-drug, the label must be examined to verify that it includes a “Drug Facts” panel or a list of “active ingredients.”

(b) Categories of products may include both taxable and tax-exempt items. For example, some types or brands of bandages are exempt because they have active ingredients, while others are taxable because they do not contain active ingredients.

(c) Examples of drugs and over-the-counter-drugs, the sales of which are exempt from sales and use tax, include, but are not limited to:

1. Acne medications;
2. Analgesics (aspirin, acetaminophen, ibuprofen, ketoprofen, naproxen, etc.);
3. Analgesic heat rubs (muscle and joint);
4. Antacids;
5. Antibiotic creams and ointments;
6. Antifungal creams and ointments;
7. Antihistamines;
8. Birth control (pills, patches, IUD);
9. Burn remedies;
10. Contraceptives (gels and foams);
11. Cold and cough medications, drops, and lozenges;
12. Decongestants;
13. Dermal fillers – injectables;
14. Dialysis dialysate solution;
15. Diaper rash creams;
16. Dressings – medicated;
17. Drug solutions (ad mixture, irrigation, IV);
18. Eye drops (tears and lubricants, but not saline solution);
19. Gases (medical grade nitrous oxide, helium, air, carbon dioxide, oxygen);
20. Hydrogen peroxide;
21. Insulin;
22. Laxatives;
23. Petroleum jelly;
24. Povidone iodine (PVP);
25. Radioactive isotopes (implanted seeds);
26. Reagents;
27. Rubbing alcohol;
28. Sleeping pills;
29. Smoking cessation gums and patches;
30. Vaccines;
31. Vapor rubs; and
32. Yeast infection medications.

18:24-37.4 Grooming and hygiene products

(a) Sales of grooming and hygiene products are subject to sales and use tax.

(b) If the product meets the definition of a “drug” and is sold pursuant to a doctor’s prescription, it is exempt from tax under N.J.S.A. 54:32B-8.1, as a drug.

(c) A grooming and hygiene product generally refers to personal care products purchased for non-medical reasons.

(d) Examples of grooming and hygiene products include, but are not limited to:

1. Cleaning fluids and saline solutions for contact lenses;
2. Deodorants;
3. Denture cleaners;
4. Body washes; and
5. Conditioners.

18:24-37.5 Durable medical equipment

(a) Sales of durable medical equipment for home use when sold for human use are exempt from sales and use tax.

(b) Repair and replacement parts for qualifying durable medical equipment for home use are exempt. Disposable or single use items used in conjunction with durable medical equipment are not exempt as repair or replacement parts.

(c) Charges for servicing, repairing, or maintaining qualified durable medical equipment for home use are not subject to tax. See N.J.S.A. 54:32B-3(b)(2)(ii).

(d) An exemption certificate is not required to purchase durable medical equipment for home use.

(e) Examples of durable medical equipment include, but are not limited to:

1. Apnea monitors (CPAP) - not worn on the body;
2. Aqua K pumps and therapeutic heating or cooling pads, compresses, or packs;
3. Aspirators;
4. Bed pans, commodes, urinals, collection bags;
5. Bed pads (alternating pressure pads);
6. Billie lights;
7. Blood glucose monitoring machines;
8. Blood pressure machines and cuffs;
9. Cardiology and cardiopulmonary equipment;
10. Defibrillators (portable automatic – external) and cables;
11. Enteral – feeding bags, feeding connectors, feeding tubing, pumps - not worn on the body;
12. Heat lamps;
13. Heating pads;
14. Hospital beds and accessories;
15. Ice packs;
16. Intravenous stands and IV poles;
17. IV therapy arm boards – reusable;
18. Kinetic therapy beds;
19. Medical monitoring equipment;
20. Mini dopplers;
21. Monitors;
22. Nebulizers;
23. Ophthalmoscopes;
24. Oscopes;
25. Oxygen concentrators, regulators, tents, and face masks;
26. Overbed table and tray;
27. Percussors;
28. Programmable drug infusion device;
29. Resuscitators – reusable;
30. Speech aids – electronic;
31. Stethoscopes;
32. Suction machines;
33. TENS units – not worn on the body;
34. Thermometers (oral, rectal, ear, etc.) – reusable;
35. Traction equipment;
36. Ventilators; and
37. Kidney dialysis equipment.

(f) Items commonly used by people without a medical condition are not exempt as durable medical equipment. Examples include, but are not limited to:

1. Air conditioners;
2. Bed wedges;
3. Dehumidifiers;
4. Humidifiers;
5. Cubicle curtains;
6. Exercise equipment;
7. Massagers;
8. Pillows and blankets;
9. Reaching aids;
10. Scales; and
11. Specimen containers.

18:24-37.6 Mobility enhancing equipment

(a) Sales of mobility enhancing equipment when sold for human use and pursuant to a doctor’s prescription are exempt from sales and use tax.

(b) Charges for equipment and labor to modify a vehicle post-production to make it handicapped accessible are exempt from tax.

(c) Repair and replacement parts for qualifying mobility enhancing equipment are exempt from tax.

(d) Charges for servicing, repairing, or maintaining qualified mobility enhancing equipment are not subject to tax. See N.J.S.A. 54:32B-3(b)(2)(ii).

(e) Examples of mobility enhancing equipment include, but are not limited to:

1. Adjustable height toilet seats;
2. Bath aids (raised toilet seat, tub, and shower stool);
3. Canes;
4. Chair lifts;

5. Crutches;
 6. Hand rails and grab bars;
 7. Lift chairs;
 8. Patient lifts (bed, bathtub, etc.);
 9. Scooters and transporters;
 10. Specialty chairs;
 11. Slings to lift patients;
 12. Swivel seats;
 13. Trapeze bars, bed pull-up T;
 14. Transfer belts, benches, and chairs;
 15. Walkers;
 16. Wheelchairs (including batteries, cushions, and safety belts); and
 17. Wheelchair ramps (portable).
- (f) Purchases of items by a private business for use by on-site customers are subject to tax. Examples include, but are not limited to:
1. A wheelchair purchased by a casino to be used by customers while visiting the casino; and
 2. A scooter purchased by a store that will be used by customers while shopping.
- 18:24-37.7 Prosthetic devices
- (a) Sales of prosthetic devices when sold for human use are exempt from sales and use tax.
- (b) Repair and replacement parts for qualifying prosthetic devices are exempt from tax.
- (c) Charges for servicing, repairing, or maintaining qualified prosthetic devices are not subject to tax. See N.J.S.A. 54:32B-3(b)(2)(ii).
- (d) Examples of prosthetic devices include, but are not limited to:
1. Abdominal belts, binders, and supports;
 2. Access ports;
 3. Apnea monitors (CPAP) - worn on the body;
 4. Arm slings;
 5. Arterial prostheses (artificial arteries implanted into humans);
 6. Acetabular cups;
 7. Anti-embolism stocking;
 8. Artificial eyes, heart valves, larynx, limbs, valves;
 9. Atrial valves;
 10. Bone cement and wax;
 11. Bone growth stimulator - external or implanted;
 12. Bone pins, plates, nails, screws;
 13. Braces (dental, back, ankle);
 14. Breast prosthesis – external;
 15. Casts, foam padding inside any part of cast;
 16. Catheters (foley, feeding, drainage, ostomy, urinary, dialysis);
 17. Cervical collars;
 18. Cochlear implant devices;
 19. Collagen implants;
 20. Colostomy devices;
 21. Corrective eyeglasses and contact lenses including non-prescription reading glasses;
 22. Defibrillator and leads – implanted;
 23. Dentures and dental prosthesis;
 24. Drainage drains, shunts;
 25. Grafts (vascular, Dacron);
 26. Gastric bands;
 27. Head halters;
 28. Hearing aids and batteries;
 29. Implanted expander;
 30. Infuser pumps – worn on the body;
 31. Insulin pumps;
 32. Implants (breast, ear, nose, throat, hands, feet, hip, knee, membranes (neuro, spinal, joint), ocular, orbital, orthobiologics, shoulder, elbows, synthetic skin, cochlear, tendon, testicular, and penile);
 33. Intra-gastric balloons;
 34. Knee immobilizers;
 35. Mastectomy surgical bras;
 36. Maxillofacial devices – implanted;
 37. Orthopedic shoes, shoe lifts, inserts, arch supports, heel protector;

38. Ostomy products (adhesives, barriers, collection bag and pouches, drain tube and valve, tubing, hernia belt);
39. Pacemakers and leads – worn on the body;
40. Penile pumps;
41. Pressure garments (edema gloves, mast pants, burn garments);
42. Programmable drug infusion devices - worn on the body;
43. Slings;
44. Speech aids (electronic) – worn on the body;
45. Splints;
46. Staples and sutures;
47. Stents;
48. Surgical mesh implants;
49. TENS units – worn on body;
50. Trachea tubes;
51. Tracheostomy speaking valve;
52. Traction devices (cervical, pelvic) – worn on the body;
53. Trusses; and
54. Vena cava filters.

18:24-37.8 Other statutory exemptions

(a) Sales of the following when sold for human use are exempt from sales and use tax:

1. Diabetic supplies;
2. Tampons and like products;
3. Medical oxygen; and
4. Human blood and its derivatives.

18:24-37.9 Purchases by medical service providers

(a) Supplies are taxable when purchased for use in providing medical services for compensation and not transferred to the purchaser of the service.

1. “Transferred to the purchaser” means that the patient must actually leave the hospital, medical, office, etc. with the property.

2. Examples of supplies that are not transferred to the purchaser include:

- i. Cotton balls;
- ii. Tongue depressors; and
- iii. Hypodermic needles and syringes.

(b) Qualified nonprofit, Federal, State, or local government owned and operated hospitals and nursing homes may purchase supplies and other tangible personal property, such as durable medical equipment and mobility enhancing equipment, which will be utilized for their own use without the payment of tax by issuing the seller a copy of the organization’s Exempt Organization Certificate (Form ST-5) and paying with organizational funds. Governmental purchasers may document the exemption by issuing a valid purchase order or contract signed by an authorized officer and paying with government funds. See N.J.S.A. 54:32B-9. For example, a non-profit hospital that has applied for and received Form ST-5 from the Division may purchase a wheelchair to be utilized by patients while staying at the hospital without the payment of tax. The exempt organization is required to issue Form ST-5 to the seller and make payment with organizational funds.

(c) A nursing home, hospital, or other medical service provider may purchase tangible personal property that will be resold to a patient without the payment of tax by issuing a fully completed resale certificate to the seller. The nursing home, hospital, or other medical service provider will not collect tax from the patient if the tangible personal property is exempt from tax.

18:24-37.10 Purchases or reimbursement of property by Medicaid or Medicare

(a) Direct purchases by the Federal government are exempt from tax. See N.J.S.A. 54:32B-9(a). For example, if the Federal government (for example, Medicaid or Medicare) is directly purchasing property, no tax is due, regardless of whether or not the property meets the N.J.S.A. 54:32B-8.1 exemption.

(b) The purchase of property reimbursed by the Federal government (for example, Medicaid or Medicare) is subject to tax unless the property meets N.J.S.A. 54:32B-8.1, as N.J.S.A. 54:32B-9(a) is not applicable.