

NJ SALES TAX EXEMPTION FOR DRUGS AND MEDICAL EQUIPMENT: EXEMPTIONS AND DEFINITIONS

As amended by the Streamlined Sales and Use Tax law (P.L. 2005, c. 126)
Effective 10/1/05

N.J.S.A. 54:32B-8.1, as amended by the Streamlined Sales Tax Agreement legislation, exempts the following when sold for human use:

drugs sold pursuant to a doctor's prescription; over-the-counter drugs; tampons or like products; diabetic supplies; medical oxygen; human blood and its derivatives; prosthetic devices; durable medical equipment for home use; mobility enhancing equipment; and repair and replacement parts for any of the foregoing exempt devices and equipment.

DEFINITIONS OF EXEMPT ITEMS:

“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:

- (1) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- (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.

“Over-the-counter drug” means a drug that contains a label which 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. (see definition below)

“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; or
- (2) prevent or correct a physical deformity or malfunction; or
- (3) support a weak or deformed portion of the body.

Examples of prosthetic devices: heart valves, hearing aids, pacemakers, artificial limbs, contact lenses, corrective eyeglasses

“Durable medical equipment” means equipment, 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.

Examples of durable medical equipment: bath and shower chairs, bed pans, raised toilet seats

“Mobility enhancing equipment” means equipment, 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; and
- (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.

Examples of mobility enhancing equipment: canes, crutches, wheelchairs, wheelchair lifts, hand controls for vehicles

TAXABLE ITEMS:

“Grooming and hygiene product,” which is defined as: “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.”

SUMMARY OF CHANGES:

The most significant change in the new law is the definition of “grooming and hygiene product,” which is specifically excluded from the definition of “over-the-counter drug.” Therefore, a soap or cleaning solution, shampoo, toothpaste, mouthwash, anti-perspirant or sunscreen lotion that contains an “active ingredient” will not be exempt from sales and use tax, unless it meets the definition of “drug” and is sold pursuant to a doctor’s prescription. The following are examples of over-the-counter (“OTC”) products, which are subject to tax on and after October 1, 2005:

- acne soaps and cleansers (lotions/creams remain exempt);
- antipsoriasis soaps and shampoos (lotions/creams remain exempt); and
- antiseborrhea or dandruff soaps and shampoos (lotions/creams remain exempt).

It is important to note that other OTC drug products remain exempt from sales and use tax. For example: antibiotic creams, athlete’s foot treatments, corn and callus remover, eczema treatments, first aid creams and wipes, fungicides, hemorrhoid treatments, iodine tincture, lice treatments, cold sore balms, poison ivy treatments, alcohol, hydrogen peroxide, and wart remover.

As under prior law, prosthetic devices, durable medical equipment and mobility enhancing equipment (as defined above) are exempt from sales and use tax, except when purchased for use in providing medical services for compensation and not transferred to the purchaser of the service.