

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 93-47

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

Application of the Arizona transaction privilege tax exemptions to sales of drugs and medical oxygen on prescription.

APPLICABLE LAW:

A.R.S. § 42-1310.01.A levies the transaction privilege tax on persons engaged in the business of selling tangible personal property at retail.

A.R.S. § 42-1310.01.A.8 exempts from the tax the gross proceeds of sales or the gross income from "... [d]rugs and medical oxygen on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances."

A.R.S. § 42-1310.01.A.33 exempts from the tax the gross proceeds of sales or the gross income from "... [m]edical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinary profession who is licensed by law to administer medical oxygen."

Arizona Administrative Code (A.A.C.) R15-5-156 defines "drugs on a prescription" as:

Those substances which can only be dispensed on the direction of a member of the medical, dental or veterinary profession, who is licensed by law to administer such drugs, and which cannot be purchased without such authorization. A legend drug is considered a drug on a prescription.

A.A.C. R15-5-156.E. provides:

2. Gross receipts from the sale of prescription drugs, for use in the course of treating patients, are not taxable if the prescription drugs

are sold to a doctor, dentist or veterinarian who is licensed by law to administer prescription drugs.

3. Gross receipts from the sale of prescription drugs are not taxable if the prescription drugs are sold to an organization where the prescription drugs are used in the course of treating patients and are administered under the direction of a doctor, dentist or veterinarian who is licensed by law to administer such drugs.

DISCUSSION:

A. The Taxability of Drugs on Prescription.

In general, all sales of tangible personal property by a retail merchant including pharmacists, hospitals and drug stores are taxable. The Arizona transaction privilege tax statutes provide a specific exemption from the tax for the sales of drugs on prescription. This exemption applies only to the sales of drugs on a prescription.

"Drugs on a prescription" are those drugs which can only be dispensed by a statutorily authorized individual and which cannot be purchased without that authorization/prescription. A "legend drug" is a drug which federal law prohibits the pharmacist from dispensing except on prescription and which bears a legend to that effect on its label. A legend drug is considered a drug on a prescription.

Three elements must be present for the sale of a drug to qualify for the exemption from the transaction privilege tax. First, the drug must be prescribed by a member of the medical, dental or veterinarian profession who is licensed by law to administer such drugs. Second, the drug must be dispensed by a pharmacist or other statutorily authorized individual, except for those purchased and used by a member of the medical, dental or veterinarian profession who is licensed by law to administer such drugs for use in the course of treating patients. Third, the drug prescribed must only be available on a prescription.

Gross receipts from the sale of prescription drugs used in the course of treating patients, as in a clinic or doctor's office, are not taxable if the prescription drugs are sold to a member of the medical, dental or veterinarian profession who is licensed by law to administer prescription drugs.

The gross receipts from the sale of prescription drugs sold to an organization, such as a hospital, where the prescription drugs are used in the course of treating patients and are administered under the direction of a member of the medical, dental or veterinarian profession who is licensed by law to administer such drugs are also exempt from taxation.

The gross receipts from the sale of prescription drugs to consumers are exempt from tax provided the drug is prescribed by a member of the medical, dental or veterinarian profession who is licensed by law to administer such drugs, the drug is dispensed by a licensed pharmacist, and the drug is only available on prescription.

The gross receipts from the sale of over-the-counter drugs are not exempt from the transaction privilege tax. Examples of over-the-counter drugs are those drugs such as aspirin, common cold remedies and cough suppressants which may be purchased without a prescription. The gross receipts from the sale of these drugs are taxable even if a physician, dentist or veterinarian has prescribed the drug.

B. The Taxability of Medical Oxygen.

Physicians, dentists and veterinarians as well as hospitals, clinics, ambulance companies and fire departments use medical oxygen in their practices. Hospitals, clinics, ambulance services and fire departments administer oxygen under the direction of a physician. Physicians, dentists and veterinarians may also administer oxygen to their patients directly in their practices.

The gross receipts from the sale of medical oxygen, as well as from the lease or sale of the delivery hose, mask or tent, regulator and tank is exempt from the transaction privilege tax if the oxygen use has been prescribed by a member of the medical, dental or veterinarian profession.

In certain situations medical oxygen may be administered without the prescription of a physician, dentist or veterinarian. For example, athletic coaches may administer oxygen to athletes to improve their performance during a sporting event. The use of medical oxygen without a prescription is subject to the transaction privilege tax.

RULING:

The gross receipts from sales of drugs which are prescribed by a member of the medical, dental or veterinarian profession, which are dispensed by an authorized practitioner or which are used in the course of treating patients and which are only available on a prescription (legend drugs), are exempt from the transaction privilege tax.

Over-the-counter drugs, which may be purchased without a prescription, are not exempt from the transaction privilege tax, even if a prescription for their use has been written by an authorized medical practitioner.

The gross receipts from sales of medical oxygen are exempt from the transaction privilege tax when the use of oxygen has been prescribed by a physician, dentist or veterinarian. The delivery hose, mask or tent, regulator and tank are also exempt from taxation if the oxygen use

has been prescribed by an authorized medical practitioner.

Gross receipts from the sale of medical oxygen which has not been prescribed by an authorized medical practitioner are not exempt from the transaction privilege tax.

Harold Scott, Director

Date Signed December 2, 1993

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.