



Legislation that took effect on October 1, 2005, which adopted the Streamlined Sales and Use Tax legislation (P.L. 2005, c.126) amended the New Jersey statute that provides an exemption for drugs and certain qualifying medical equipment. N.J.S.A. 54:32B-8.1, as amended, 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.**

The information in this publication describes the adoption of the health care definitions for drugs and medical equipment, including durable medical equipment, grooming and hygiene products, mobility enhancing equipment, over-the-counter drug, prescription and prosthetic devices.

\*As of January 1, 2009, mobility enhancing equipment is only exempt when sold pursuant to a doctor’s prescription.

## **DRUGS**

Prior to October 1, 2005, medicines and drugs sold under a doctor’s prescription and over-the-counter drugs that were recommended and generally sold for the relief of pain, ailments, distresses or disorders of the human body were exempt.

Effective October 1, 2005, all drugs for human use, including prescribed drugs and over-the-counter drugs are exempt from Sales and Use Tax.

“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 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 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. (See definition below).

To determine if an over-the-counter item is an exempt drug, examine the label to verify a “Drug Facts” panel or a list of active ingredients. For example, eye drops are taxable unless an active ingredient is listed or there is a Drug Facts panel on the label.

Examples of exempt prescribed and over-the-counter drugs are:

- Acne medication
- Alcohol (rubbing)
- Analgesics (aspirin, acetaminophen, ibuprofen, ketoprofen, naproxen, etc.)
- Antacids
- Antibiotic creams and ointments
- Antifungal creams and ointments
- Antihistamines
- Birth control (pills and patches)
- Burn remedies
- Chapstick\*, Blistex\* (if active ingredient and not a grooming or hygiene product)
- Contraceptives (gels and foams)
- Cold and cough medications, drops, and lozenges
- Decongestants
- Diaper rash creams (Desitin\*, Balmex\*)
- Enema preparations
- Eye drops (Visine\*, tears and lubricants, but not saline solution)
- Hydrogen peroxide
- Insulin
- Laxatives
- Metamucil\*
- Rubs (Vicks\*, Ben-Gay\*, etc.)
- Sleeping Pills
- Smoking cessation gum and patches
- Vaseline\* petroleum jelly
- Yeast infection medications

\* Brand names are shown for illustration purposes only and do not imply sole representation in any category or a commercial endorsement by the State of New Jersey.

Often, categories of products include both taxable and exempt items. For example, some types or brands of baby powder are exempt because they have active ingredients, while others are taxable because they have no active ingredients. It is necessary to check the label to determine whether a specific item is exempt or taxable.

## **GROOMING AND HYGIENE PRODUCTS**

Grooming and hygiene products are taxable. The law specifically taxes the following categories of products. These products are taxable even if they meet the definition of over-the-counter drug (their packaging includes a "drug facts" panel or a statement of the active ingredients as described in the section on Drugs).

"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". The Division narrowly interprets the phrase "grooming and hygiene product" to apply to personal care items that would generally be purchased for nonmedical reasons.

Many products that are commonly thought of as grooming and hygiene products are not included in the definition above. Items that do not meet the definition of "grooming and hygiene products" are taxable unless they meet the criteria for an over-the-counter drug. For example, some body powders and creams are exempt as over-the-counter drugs because they have a list of active ingredients on the packaging.

Other generally taxable items:

- Band-Aids (unless containing an active ingredient or a Drug Facts box)
- Baby oil, powder and creams
- Bath oils, salt sprays, beads, etc.
- Colognes and perfumes
- Contact lens cleaners
- Cosmetics
- Cotton balls and swabs
- Deodorants
- Feminine hygiene products such as douches, wipes and sprays (unless containing an active ingredient or a Drug Facts box)
- Hair care products such as gel, mousse, hair spray, color, perm solution, conditioners, treatments, brushes and combs
- Hand and body lotions
- Moisturizers
- Saline solution

## **FEMININE HYGIENE PRODUCTS**

An exemption is provided for feminine hygiene products such as tampons, sanitary napkins and panty liners.

Yeast infection medications are usually exempt because they qualify for the over-the-counter drug exemption. However, feminine sprays and cleansing products, such as douches and wipes are taxable.

## **PROSTHETIC DEVICES**

Prosthetic devices are exempt from Sales Tax. An item qualifies as a prosthetic device if it meets one of the three criteria listed in the definition below.

“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.

## **REPAIR AND REPLACEMENT PARTS**

Repair and replacement parts for prosthetic devices are also exempt. (Disposable or single use items used in conjunction with prosthetic devices are not exempt as repair or replacement parts).

## **CORRECTIVE EYEWEAR**

Corrective eyeglasses and contact lenses are also exempt. Non-prescription reading glasses are considered corrective and are exempt.

Examples of items exempt as prosthetic devices:

- Abdominal belts, binders and supports
- Access ports
- Ace bandages
- Apnea monitors (C.P.A.P. – worn)
- Arm slings
- Arterial prostheses (artificial arteries implanted into humans)
- Acetabular cups
- Anti-embolism stocking
- Arch supports
- Artificial eyes, heart valves, larynx, limbs
- Atrial valves
- Bone cement and wax
- Bone pins, plates, nails, screws
- Braces (dental, back)
- Breathe Right\* strips
- Casts, foam padding inside any part of cast (casting materials)
- Catheters (Foley, drainage, ostomy)
- Cervical collars
- Cochlear implant devices
- Collagen implants
- Colostomy devices

- Compression sleeves
- Contact lenses (corrective)
- Dentures
- Drainage drains, shunts
- Elastic bandages and supports (wrist, ankle, knee, etc.)
- Eye glasses (corrective)
- Grafts (vascular, Dacron)
- Head halters
- Hearing aids and batteries
- Heel protectors
- Insulin pumps
- Implants (breast, ear, nose, throat, hands, feet, hip, knee, membranes (neuro, spinal, joint), ocular, orbital, orthobiologics, shoulder, elbows, synthetic skin, tendon, testicular & penile))
- Knee immobilizers
- Mastectomy surgical bras
- Orthopedic shoes, shoe lifts, inserts, arch supports, heel protector (also exempt as clothing)
- Ostomy products (adhesives, barriers, collection bag & pouches, drain tube & valve, tubing, hernia belt)
- Pacemakers and leads
- Pressure garments (edema gloves, mast pants, burn garments)
- Programmable drug infusion device (only if worn on the body)
- Slings
- Splints, air or other & materials
- Staples and sutures
- Surgical mesh implants
- Trachea tubes
- Traction devices – worn on the body ( cervical, pelvic)
- Trusses

## **DURABLE MEDICAL EQUIPMENT**

Durable medical equipment for home use is exempt from Sales Tax.

“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.

Durable medical equipment is a broad category that includes all reusable medical and surgical equipment, including diagnostic equipment that is not mobility enhancing equipment and is not worn in or on the body.

## **HOME USE**

Durable medical equipment is only exempt when sold for home use. “Home use” means that the equipment is sold to an individual for use at home, regardless of where the individual resides.

This may include residential facilities such as a nursing home, assisted care center, or school dormitory. No exemption certificate is required to purchase durable medical equipment for home use.

### **NON-HOME USE**

Sales of durable medical equipment to or for a facility that provides healthcare such as a hospital, nursing home, clinic, dental office, chiropractor or optician office, is considered a sale for non-home use. These sales are taxable unless another exemption applies. For example, a medical clinic must pay tax on durable medical equipment. However, qualified nonprofit, State or local government owned and operated hospitals and nursing homes may purchase durable medical equipment exempt because these purchasers are exempt under another provision of the law. To prove exempt status, a non-profit purchaser must present its seller a copy of its Exempt Organization Certificate (Form ST-5). Purchases by a government entity are likewise exempt from Sales Tax. This may be substantiated with a copy of a valid purchase order or contract signed by an authorized officer and payment by government funds.

### **MEDICAL PURPOSE**

A "medical purpose" means that the equipment is used for the diagnosis, treatment, or cure of disease, illness or injury.

Examples of durable medical equipment exempt for home use:

- Alternating pressure pads (eliminate bed sores)
- Apnea monitors (C.P.A.P. – not worn)
- Aqua K pumps and pads (therapeutic heating or cooling pads, compresses or packs)
- Aspirators (suction pumps)
- Bed pans, commodes, urinals
- Bed pads (alternating pressure)
- Billie lights (used for yellow jaundice)
- Blood glucose monitoring machines
- Blood pressure machines and cuffs
- Cardiology equipment (portable Holter monitor)
- Collection bags and basins (urine, bedpans, emesis basins)
- Defibrillators (portable automatic – external) and cables
- Heat lamps
- Heating pads
- Hospital beds, accessories & repair parts
- Ice packs
- Intravenous stands and IV poles
- IV therapy arm boards – reusable
- Kinetic therapy beds
- Medical monitoring equipment
- Mini dopplers (measures blood flow and rate)
- Monitors
- Nebulizers
- Ophthalmoscopes (for eyes)
- Oscopes (for ears)

- Oxygen concentrators, regulators, tents and face masks
- Overbed table and tray
- Percussors
- Programmable drug infusion device
- Resuscitators (reusable)
- Stethoscopes
- Suction machines
- Thermometers (oral, rectal, ear, etc.) – reusable
- Traction equipment
- Ventilators

### **REPAIR AND REPLACEMENT PARTS**

Repair and replacement parts for equipment are also exempt including all components and attachments used in conjunction with the exempt equipment. Disposable or single use items used in conjunction with durable medical equipment are not exempt as repair or replacement parts.

Examples of items that are not durable medical equipment and are taxable:

- Air conditioners, dehumidifiers and humidifiers
- Carts
- Cubicle curtains
- Exercise equipment
- Massagers, massage appliances and furniture
- Pillows and blankets
- Scales
- Specimen containers
- Waterproof sheeting

### **DIABETIC SUPPLIES AND EQUIPMENT**

An exemption is provided for diabetic supplies such as single-use finger-pricking devices for the extraction of blood and other single-use devices such as syringes and single-use diagnostic agents used in diagnosing, monitoring, or treating diabetes.

Reusable equipment such as finger-pricking devices and blood glucose monitoring machines, qualify for exemption as durable medical equipment for home use.

### **MOBILITY ENHANCING EQUIPMENT**

Effective January 1, 2009, mobility enhancing equipment is only exempt when sold pursuant to a doctor's prescription.

"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 exempt mobility enhancing equipment:

- Adjustable height toilet seats
- Bath aids (raised toilet seat, tub & shower stool)
- Canes
- Chair lifts
- Crutches
- Hand rails and grab bars
- Lift chairs
- Patient lifts (bed, bathtub, etc.)
- Scooters and transporters
- Specialty chairs
- Slings to lift patients
- Shower chairs and stools
- Trapeze bars
- Transfer belts, benches and chairs
- Walkers
- Wheelchairs (batteries, cushions and safety belts)
- Wheelchair ramps (portable)

### **REPAIR AND REPLACEMENT PARTS**

Repair and replacement parts for mobility enhancing equipment are also exempt. Disposable or single use items used in conjunction with mobility enhancing equipment are not exempt as repair or replacement parts.

### **MEDICAL SERVICE PROVIDERS**

Sales of mobility enhancing equipment to or for medical service providers are subject to tax. Qualified nonprofit, State or local government owned and operated hospitals and nursing homes are able to make purchases of mobility enhancing equipment exempt because these purchasers are exempt under another provision of the law. To prove exempt status, a non-profit purchaser must present its seller a copy of its Exempt Organization Certificate (Form ST-5). Purchases by a government entity are likewise exempt from Sales Tax. This may be substantiated with a copy of a valid purchase order or contract signed by an authorized officer and payment by government funds.

## **ADDITIONAL ITEMS RELATED TO DRUGS AND MEDICAL EQUIPMENT**

### **HANDICAPPED-ACCESSIBLE VEHICLES**

If a vehicle is modified to make it handicapped accessible, parts, accessories and labor to modify it are exempt from tax, but the underlying vehicle is subject to tax.

### **SUPPLIES**

Sales of supplies are subject to tax if purchased for use in providing medical services for compensation but not transferred to the patient in conjunction with the performance of services.

### **PHARMACEUTICAL SAMPLES**

Items that qualify for an exemption from Sales and Use Tax such as prescription drugs are also exempt from Sales and Use Tax when given by manufacturers or distributors as samples.

### **MEDICAL RECORDS**

Charges for copies of medical records by health care facilities are exempt. The service of retrieving medical records for current or former patients or their representatives is exempt from Sales Tax as a personal service. If the retrieval service provides several copies as part of the service, that fact could transform the transaction into the sale of tangible property under N.J.S.A. 54:32B-3(a). This would be similar to copying or printing services provided by a printer. For example, retrieval service X charges for retrieval at a fixed rate plus \$1.00 per page of copied material. For an additional charge, X will also provide its customer with complete sets of the documents retrieved for the customer. The additional charge is \$.50 per page.

The retrieval service is exempt from tax, which incidentally includes a photocopying expense. If the service provider also performs printing services, as noted above, he/she must collect and remit tax just as a printer would.

### **FOOD AND FOOD INGREDIENTS AND DIETARY SUPPLEMENTS**

Generally, food sold in a grocery store is not taxable. Dietary supplements, including vitamins and minerals are also exempt from tax. "Dietary supplement" means any product, other than tobacco intended to supplement the diet required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to Federal law.

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**Note:** A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.