



TAX BULLETIN 13-5
Virginia Department of Taxation
March 15, 2013

**INFORMATION REGARDING NONPRESCRIPTION
DRUGS AND PROPRIETARY MEDICINES**

The Department of Taxation has received a number of inquiries recently as to whether certain specified products qualify for exemption from the Retail Sales and Use Tax as nonprescription drugs or proprietary medicines. This Tax Bulletin provides an overview of the exemption available for nonprescription drugs and proprietary medicines. This Tax Bulletin updates and supersedes Virginia Tax Bulletin (VTB) 98-4 (May 15, 1998).

BACKGROUND

In 1990, the Virginia General Assembly enacted legislation (Senate Bill 317, Chapter 117, 1990 Acts of Assembly) to exempt from the Retail Sales and Use Tax all nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment, or prevention of disease in human beings. Although the legislation contained a July 1, 1992 effective date, due to a number of deferrals, the exemption did not take effect until July 1, 1998. Subsequent legislation enacted by the 1997 General Assembly (House Bill 1665, Chapter 696, 1997 Acts of Assembly), expanded the exemption to include samples of nonprescription drugs and proprietary medicines distributed free of charge by the manufacturer, including packaging materials and constituent elements and ingredients.

The exemption continues to be applicable regardless of the nature of the purchaser, and applies to purchases made by individuals, physicians, medical facilities, and all other entities.

EXEMPTION GENERALLY

The exemption extends to “nonprescription drugs,” which include any substances or mixture of substances containing medicines or drugs for which no prescription is required and which are generally sold for internal or topical use in the cure, mitigation, treatment or prevention of disease in human beings. The exemption also applies to “proprietary medicines,” defined as any nonprescription drug sold to the general public under the brand name or trade name of the manufacturer, which drug does not contain any controlled substance or marijuana.

In determining whether the nonprescription drug exemption applies, three questions must be considered: (1) Is the item a nonprescription drug or proprietary medicine? (2) Is the product sold for internal or topical use? (3) Is the product sold for the cure, mitigation, treatment or prevention of disease in human beings?

While these questions must be considered, there are certain categories of items that generally would not qualify for exemption as nonprescription drugs. These categories include:

- Cosmetics – articles applied to the body for cleansing, beautifying, promoting attractiveness or altering the appearance (including makeup, body lotions, cold creams, daily moisturizers, and hair restoration products), regardless of whether the items contain nonprescription drugs or other medicinal ingredients;
- Toilet articles – articles advertised or held out for sale for grooming purposes (including many soaps, toothpastes, hair sprays, shaving products, colognes, deodorants, and mouthwashes);
- Food products and supplements – items classified as such by the Federal Food and Drug Administration (including herbal teas, drinks, pills or supplements, diet aids, and weight control preparations);
- Vitamins and mineral concentrates sold as dietary supplements or adjuncts (except when sold pursuant to a written prescription by a licensed physician, nurse practitioner, or physician’s assistant);
- Devices – including contraceptive items, birth control preparations, and testing kits;
- Products listing natural and herbal ingredients as the active components, where such products do not contain a nonprescription drug or proprietary medicine or do not treat, cure, or prevent disease in human beings; and
- Items containing nonprescription drugs or other medicinal ingredients, where the inclusion of such substances serves as a secondary function to the intended use of the product.

PRODUCT CLASSIFICATIONS

Nonprescription Drugs: Examples of exempt nonprescription drugs are listed below. This list is intended as a guide and is not intended to be all inclusive.

- Acne products
- Alcohol (rubbing)
- Alcohol swabs
- Allergy relief products
- Analgesics
- Anesthetics
- Antacids
- Antibiotic ointments
- Antifungals
- Antihistamines
- Antimalarials
- Antinauseants
- Antiseptics
- Aspirin
- Asthma preparations
- Baby powder (medicated)
- Bandages/gauze/swabs/wipes containing antiseptic or bacterial control products in the pad
- Bee sting relievers
- Benzoin
- Boric acid ointment
- Burn remedies
- Calamine lotion
- Camphor
- Castor oil
- Cathartics
- Cold capsules and remedies
- Cold/canker sore preparations
- Contact lens lubricating and wetting solutions (inserted directly into the eye)
- Contraceptive creams (containing nonprescription drugs and intended to treat a disease)
- Cough and cold items, cough drops, cough syrups
- Dandruff and seborrhea preparations
- Decongestants
- Diarrhea remedies
- Digestive aids
- Disinfectant (for use in humans)
- Diuretics
- Earache/earwax removal preparations

- Eczema preparations
- Epsom salts
- Expectorants
- Eye drops, lotions, ointments and washes for healing, treatment or therapeutic use
- Fever blister aids
- First aid healing agents, cleaners
- Fluoride rinses and antiseptic dental washes
- Foot care products for treatments of infections (callous removers, medicated corn, ingrown toenail preparations, athlete's foot treatments)
- Fungicides (for use on humans)
- Glucose tablets
- Glycerine products intended for medical use
- Hay fever aid products
- Headache relief aid products
- Hemorrhoidal treatments
- Hydrogen peroxide
- Ibuprofen
- Insect bite and sting preparations
- Iodine (tincture of)
- Itch, rash relievers
- Laxatives
- Lice products used to kill lice that infect humans
- Liniments
- Lip balms, ice and salves (medicated)
- Lotions (medicated)
- Menstrual cramp relievers
- Mercurochrome
- Mineral oil
- Motion sickness remedies
- Mouthwashes (antiseptic)
- Muscle ache relievers
- Nasal drops and sprays
- Nicotine supplements (that treat nicotine withdrawal symptoms)
- Oil of wintergreen
- Pain relievers (oral or topical)
- Parasiticides (for humans)
- Peroxide (medicinal)
- Poison ivy and oak preparations
- Powder (medicated)
- Rectal preparations
- Shampoos (medicated)
- Shaving products (medicated)
- Sinus relievers

- Sitz bath solutions
- Skin irritation relievers
- Sleep aids (inducers)
- Soap (germicidal, surgical, therapeutic, or anti-bacterial)
- Styptic pencils
- Sunburn lotions
- Sunscreen (containing SPF protection)
- Suppositories (except contraceptives)
- Teething preparations
- Throat lozenges (medicated)
- Tooth desensitizers
- Toothache relievers
- Upset stomach relievers
- Vaginal infection remedies
- Wart removers
- Witch hazel
- Worming treatments (for humans)
- Zinc oxide ointments

Nonqualifying Items: Examples of items that would not qualify for the nonprescription drug exemption are listed below. This list is intended as a guide and is not intended to be all inclusive. Items listed below may qualify for another medical exemption.

- Adhesive bandages, dressings and cotton
- Adhesive removers
- Adhesive tape
- Ammonia
- Appetite suppressants
- Bath crystals, milks, oils, and powder
- Birth control preparations
- Breath fresheners and sweeteners
- Bubble bath
- Bunions, corn pads (nonmedicated)
- Cleaning creams and lotions
- Clove oil
- Cod liver oil
- Contact lens cleaning solutions and disinfectants (unless designed to be applied directly in the eye)
- Cosmetics (whether or not containing medicinal properties or acne treatments)
- Cotton applicators, rolls, balls, and swabs
- Cuticle softener
- Denture adhesives, cleaners, preparations
- Deodorants, antiperspirants

- Depilatories
- Dental floss and threaders
- Diet aids
- Dietary foods, supplements and substitutes
- Distilled water
- Exfoliants
- Hair restoration products
- Hand sanitizers, sprays, foams, gels, soaps or wipes (including anti-bacterial)
- Herbal teas, drinks, pills, or powder supplements
- Household disinfectants and insecticides
- Infant formula
- Insect repellent
- Lubricants
- Mouthwashes (other than antiseptic)
- Nutraceutical products
- Oral electrolyte mixtures for rehydration
- Pet medical supplies
- Pet medicines
- Petroleum jelly
- Powders (nonmedicated)
- Prophylactics
- Pumice powder
- Saline solution
- Sanitary napkins, tampons, and similar items
- Shampoos (nonmedicated)
- Shaving products (nonmedicated)
- Skin bleaches
- Soaps (generally)
- Stimulants
- Suntan lotion (without SPF protection)
- Talcum powder
- Testing kits (except diabetic testing kits)
- Thermometers
- Toothpastes, polishes, powders, whiteners (including products containing fluoride or peroxide)
- Vitamins and mineral supplements
- Wax
- Weight control preparations
- Wrinkle removing and concealing preparations

ADDITIONAL PRODUCT CLASSIFICATIONS

Glycolic Acid Products: Glycolic acid is considered a cosmetic used for smoothing skin, removing age spots and wrinkles, and for skin lightening for the purpose of beautifying, promoting attractiveness or altering the appearance. Although glycolic acid with higher concentration may be issued by physicians and dermatologists, the primary purpose of the product is to enhance the appearance. As a cosmetic, the product does not qualify as a nonprescription drug.

Homeopathic Medicines: The term “homeopathy” is defined in the *Merriam Webster’s Collegiate Dictionary* as a system of medical practice that treats a disease by the administration of minute doses of a remedy that would in larger amounts produce in healthy persons symptoms similar to those of the disease.

If a homeopathic product is classified as a drug by FDA, is used internally or topically, and for the cure, treatment, mitigation, or prevention of disease in human beings, the product is exempt from the Retail Sales and Use Tax.

Nonprescription Drugs Packaged with other Items: The sale of nonprescription items packaged with items that would not qualify for exemption as nonprescription drugs (such as the sale of a first-aid kit) is subject to the Retail Sales and Use Tax, computed on the total sales price.

Products that Require OTC Registration: Products that require over the counter registration do not necessarily qualify as a nonprescription drug or medicine. The product must contain medicines or drugs, be used internally or topically, and be intended for the treatment or prevention of disease in human beings.

Sensitive Care Products: Items identified as “sensitive care products,” range from lotions and soap-free cleaners to medicated products that treat a number of medical conditions. The taxability of these items must be determined on a case-by-case basis, based on the ingredients the item contains and the intended purpose of the product.

REQUIREMENTS FOR RETAILERS

Forms and Recordkeeping: Sales made under the nonprescription drug exemption must be included with all other exempt sales on the retailer’s regular sales tax return, Form ST-9. Retail dealers making sales of such items must keep records segregating purchases and sales of exempt items.

Improper Collection of the Tax: A retailer that incorrectly charges or overcollects the sales and use tax must timely remit all tax collected to the Department of Taxation, unless he provides a refund to the customer.

In order to obtain a refund of tax paid in error, a customer must return to the store with his sales receipt and obtain a refund from the retailer. The retailer can claim a

credit for the tax refunded to customers on his sales and use tax return, provided he remitted the tax. If the retailer refuses to reimburse the erroneously charged tax, the consumer can contact the Department of Taxation and provide a receipt of the transaction in question so that the Department of Taxation can notify the retailer of any exemptions available on qualifying products.

For additional information, please visit the Department's website, www.tax.virginia.gov. If you have any questions regarding this Tax Bulletin, you may also contact the Department at (804) 367-8037 or through the "Live Chat" service on the Department's website, www.tax.virginia.gov.