



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-18-010

July 10, 2018

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Attn: XXXXXX

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Re: Prescription Containers Purchased by Pharmacies

Dear XXXXXX,

You submitted a request for guidance on behalf of XXXXXX ("Pharmacy") to determine the taxable nature of prescription containers that are purchased by a pharmacy.

The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues, but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department Rule 1 CCR 201-1, 24-35-103.5.

The Department treats this request as a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If Company would like the Department to issue a private letter ruling on the issue raised here, Company can submit a request and pay the fee in compliance with Department Rule 1 CCR 201-1, 24-35-103.5.

Issue

Does a pharmacy's purchase of containers and labels, which are later included in sales to patients pursuant to a prescription, qualify for the medical materials exemption found in §39-26-717(1)(k), C.R.S., or the container exemption found in §39-26-102(20)(a) and § 39-26-713(2)(e)(1), C.R.S.?

Discussion

Colorado levies sales and use tax on the sale of tangible personal property.¹ Colorado and state-administered local tax jurisdictions exempt from sales and use taxes certain medical materials. For example, medical materials are exempt from taxation when a licensed provider, as part of their professional services, provides the medical materials to a patient and the materials leave the premises with the patient.² A licensed provider qualified for this exemption is any person with an authority to prescribe drugs under title 12 of the Colorado Revised Statutes.³

Pharmacists do not have a prescriptive authority in regards to prescription drugs.⁴ Additionally, the Colorado Department of Regulatory Agencies does not list pharmacists as medical professionals authorized to prescribe medication.⁵ As such, a pharmacist does not qualify as a licensed provider and the medical materials exemption cannot be extended to purchases made by pharmacists.

Certain containers and labels are also exempt from state and state-administered sales and use tax. Manufacturers and compounders that use a container, label or shipping case to enclose or encase the article, substance, or commodity they produce may purchase such containers, labels and shipping cases free of sales or use tax.⁶ Retailers may also purchase containers and labels free of sales or use tax when the container or label will be used by the retailer as a container or label for items that they sell.⁷

Determination of a pharmacy's work as either manufacturing or compounding is a technical question and outside the scope of a general information letter. However, pharmacies are undoubtedly retailers.⁸ As such, a pharmacy's purchase of containers and labels from a vendor will be exempt from sales or use tax when the containers and labels purchased are later used to contain and dispense an order for the pharmacy's customers.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

¹ §§ 39-26-104 and 204 C.R.S.

² § 39-26-717(1)(k), C.R.S.

³ § 39-26-717(3), C.R.S.

⁴ § 12-42.5-102(27), C.R.S.

⁵ www.colorado.gov/pacific/dora/Pharmacy_Prescriptive_Authority

⁶ §§ 39-26-102(20) and 713(2)(e)(I), C.R.S. See also Department Regulation 1 CCR 201-4: 39-26-102.20.

⁷ Colorado Special Regulation SR-9 Containers.

⁸ § 39-26-102(8), C.R.S.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments, which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/tax for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue