

**North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001**

IMPORTANT NOTICE – MEDICAL PRODUCTS

The 2003 General Assembly enacted House Bill 397 that substantially changes the definitions of and the exemptions for drugs and medical equipment. The changes are effective July 15, 2003. The first section of this document sets out the statutory changes in the sales and use tax laws; the second section explains the effect of the law changes.

Section 1: Law Changes

The following definitions have been amended or added:

G.S. 105-164.3(8a) Drug – A compound, substance, or preparation or a component of one of these that meets any of the following descriptions and is not food, a dietary supplement, or an alcoholic beverage:

- a. Is recognized in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary.
- b. Is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.
- c. Is intended to affect the structure or function of the body.

G.S. 105-164.3(8b) Durable Medical Equipment – Equipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include mobility enhancing equipment.

- a. Can withstand repeated use.
- b. Primarily and customarily used to serve a medical purpose.
- c. Generally not useful to a person in the absence of an illness or injury.
- d. Not worn in or on the body.

G.S. 105-164.3(8c) Durable Medical Supplies – Supplies related to use with durable medical equipment that are eligible to be covered under the Medicare or Medicaid Program.

G.S. 105-164.3(21a) Mobility Enhancing Equipment – Equipment that meets all of the conditions of this subdivision. The term includes repair and replacement parts for the equipment. The term does not include durable medical equipment.

- a. Primarily and customarily used to provide or increase the ability of an individual to move from one place to another.
- b. Appropriate for use either in a home or motor vehicle.
- c. Not generally used by a person with normal mobility.
- d. Not normally provided on a motor vehicle by a motor vehicle manufacturer.

G.S. 105-164.3(25a) Over-the-Counter Drug – A drug that can be dispensed under federal law without a prescription and is required by 21 C.F.R. 210.66 to have a label containing a “Drug Facts” panel and a statement of its active ingredients.

G.S. 105-164.3(29) Prescription – An order, formula, or recipe issued orally, in writing, electronically, or by another means of transmission by a physician, dentist, veterinarian, or another person licensed to prescribe drugs.

G.S. 105-164.3(30a) Prosthetic Device – A replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device.

- a. Artificially replaces a missing portion of the body.
- b. Prevents or corrects a physical deformity or malfunction.
- c. Supports a weak or deformed portion of the body.

The following exemptions regarding drugs and medical equipment have been amended:

G.S. 105-164.13(12) Sales of any of the following items:

- a. Prosthetic devices.
- b. Mobility enhancing equipment sold on prescription.
- c. Durable medical equipment sold on prescription.
- d. Durable medical supplies sold on prescription.

G.S. 105-164.13(13) All of the following drugs, including their packaging materials and any instructions or information about the drugs included in the package with them:

- a. Drugs required by federal law to be dispensed only on prescription.
- b. Over-the-counter drugs sold on prescription.
- c. Insulin.

Section 2: Effect of Law Changes

Drugs

The application of sales and use tax for drugs remains the same as under the law prior to July 15, 2003. Drugs required to be dispensed on prescription are exempt from sales or use tax; this includes drugs sold by a pharmacy to a customer and drugs purchased by a medical care facility. Over-the-counter drugs are only exempt when sold on a prescription; prior to July 15, 2003, these drugs are set out in the law as nonprescription drugs. There were no changes to the taxation of insulin; it is exempt whether or not it is sold on prescription.

Medical Equipment

Most of the items considered to be orthopedic appliances under the law prior to July 15, 2003 constitute prosthetic devices for subsequent periods. A major exception is a wheelchair; this item constitutes a mobility enhancing device on or after July 15, 2003. Prosthetic devices do not have to be sold on prescription to be exempt. Examples of prosthetic devices include: artificial arteries, artificial implants, corrective eyeglasses, hearing aids, dental prosthesis, and orthotic supports.

Most of the items considered to be therapeutic, prosthetic, or artificial devices that correct or alleviate a physical ailment or illness, or durable medical equipment under the law prior to July 15, 2003 constitute durable medical equipment under the new definition for this term. Sales of durable medical equipment made on or after July 15, 2003 must be sold on prescription in order to be exempt.

Many of the items that constitute mobility enhancing equipment, such as chair lifts for the home and motor vehicles, were exempt prior to July 15, 2003 as artificial devices that alleviated a physical ailment. There is no change in the application of sales and use tax for these items and a prescription is still required to come within the exemption. Items such as wheelchairs, walkers, and crutches did not require a prescription to be exempt under the prior law. For sales of these items after July 15, 2003, only those sold on prescription will be exempt.