

State of Rhode Island and Providence Plantations

Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

Pursuant to the provisions of Rhode Island General Law §42-35-3(a)(1) and in accordance with the Administrative Procedures Act (Chapter 42-35 of the General Laws), the Division of Taxation hereby gives notice of its intent to amend regulation SU 07-60, "Drugs, Medicines, and Health Care Products."

The purpose of this rule making process is to implement Chapters 44-18 and 44-19 of the Rhode Island General Laws, which imposes sales and use tax on prescription drugs, medicines, marijuana for medical use, dietary supplements and grooming and hygiene products. This regulation shall take effect October 1, 2011 and shall amend and supersede regulation SU 07-60 promulgated January 2007.

The proposed rule to be amended, and a concise summary of non-technical requirements and proposed new rules are, available for public inspection at www.tax.ri.gov, in person at the Rhode Island Division of Taxation, or can be requested by e-mail at mcanole@tax.ri.gov or by calling Michael Canole at (401) 574-8729.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap, or significant economic impact on small business was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Friday, August 26, 2011, to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail: mcanole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on Friday, August 26, 2011, at 1p.m., at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing to Michael Canole at Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by calling (401) 574-8729.

Rhode Island Department of Revenue

Division of Taxation

Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1) regarding rules and regulations on drugs, medicines, marijuana for medical use, dietary supplements and grooming and hygiene products – Amended.

This regulation implements Chapters 44-18 and 44-19 of the Rhode Island General Laws. These chapters provide for sales and use taxes liability and computation and sales and use taxes enforcement and collection in regard to drugs, medicines, marijuana for medical use, dietary supplements and grooming and hygiene products.

~~State of Rhode Island – Division of Taxation~~

~~Sales and Use Tax~~

~~Regulation SU-07-60~~

~~Drugs, Medicines, and Health Care Products~~

Under the Rhode Island sales tax law, sales of the following are exempt:

- ~~1. Medicines and drugs which are sold on a doctor's prescription.~~
- ~~2. Over the counter drugs.~~
- ~~3. Insulin~~
- ~~4. Medical oxygen~~
- ~~5. Blood~~

Definitions of Exempt Items:

~~“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:~~

- ~~(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 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 C.F.R. 201.66. The label must contain:~~

- ~~(1) a “Drugs Fact” panel; or~~
- ~~(2) a statement of the “active ingredient(s) with a list of those ingredients contained in the compound, substance or preparation.~~

~~“Over-the-counter drug” does not include “grooming and hygiene products.” (defined below)~~

~~Examples of the various types of medicinal products which fall within the classification of exempt “over-the-counter drugs” are:~~

- ~~• Analgesics, whether used externally or internally; cough medicines (but not cough drops); tonics and alternatives; antacids, laxatives and cathartics; medicated eye preparations; remedies for treatment of burns; and antiseptics.~~
- ~~• Although not a medicine or a drug, hypo-syringes and needles are also exempt.~~

Definition of Taxable Items:

“Grooming and hygiene products” are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of **“over-the-counter drug.”**

“Dietary supplement” means any product intended to supplement the diet; that is required to be labeled as a dietary supplement, identifiable by the **“Supplemental Facts”** box found on the label as required pursuant to Federal law.

The following categories are examples of items that are **not regarded as over-the-counter drugs**, and therefore are subject to the tax:

1. Cosmetics and toilet articles including but not limited to items such as deodorants, beauty preparations, facial and hand creams and lotions, feminine hygiene items, shampoo oils, soaps, teeth cleaning preparations, so-called suntan preparations.
2. Vitamins sold as dietary supplements or adjuncts. These usually come in tablet, capsule or pill forms. However, the tax will not apply when sold on a doctor's prescription.
3. First aid medical supplies such as adhesive tape, plasters, and bandages, including those medicinally treated, cotton, gauze, ice bags, syringes, water bottles and similar supplies.
4. Household disinfectants and insecticides whether in liquid, spray, paste or other form.
5. Contact lens cleaning and wetting solutions.
6. Medicated shampoos and soaps.
7. Reducing products and supplements are subject to tax. However, products that replace an entire meal are considered food products and are therefore exempt.

DAVID M. SULLIVAN
TAX ADMINISTRATOR

EFFECTIVE: JANUARY 2007

THIS REGULATION AMENDS AND SUPERCEDES REGULATION SU 00-60
PROMULGATED JANUARY 1, 2000.

State of Rhode Island - Division of Taxation

Sales and Use Tax

Regulation SU 11-60

Drugs, Medicines, Marijuana For Medical Use, Dietary Supplements and Grooming and Hygiene Products

Table of Contents

RULE 1. PURPOSE

RULE 2. AUTHORITY

RULE 3. APPLICATION

RULE 4. SEVERABILITY

RULE 5. DEFINITIONS

RULE 6. TAXATION OF DRUGS

RULE 7. TAXATION OF OVER-THE-COUNTER-DRUGS

RULE 8. TAXATION OF GROOMING AND HYGIENE PRODUCTS

RULE 9. TAXATION OF DIETARY SUPPLEMENTS

RULE 10. TAXATION OF MARIJUANA FOR MEDICAL USE

RULE 11. EFFECTIVE DATE

RULE 12. CROSS REFERENCE

RULE 1. PURPOSE

This regulation implements Chapters 44-18 and 44-19 of the Rhode Island General Laws. These Chapters provide for Sales and Use Taxes Liability and Computation and Sales and Use Taxes Enforcement and Collection in regard to drugs, medicines, marijuana for medical use, dietary supplements and grooming and hygiene products.

RULE 2. AUTHORITY

This regulation is promulgated pursuant to RIGL Chapters 44-18 and 44-19 as amended. These rules have been prepared in accordance with the requirements of RIGL 42-35-3(b), 44-1-1 et. seq. and 44-19-33.

RULE 3. APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department of Revenue to effectuate the purposes of RIGL Chapters 44-18 and 44-19 and other applicable state laws and regulations.

RULE 4. SEVERABILITY

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

RULE 5. DEFINITIONS

“Dietary supplement” means any product, other than "tobacco," intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

1. A vitamin;
2. A mineral;
3. An herb or other botanical;
4. An amino acid;
5. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
6. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

“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:

(A) 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

(B) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) intended to affect the structure of any function of the body.

"Drug" shall also include insulin and medical oxygen whether or not sold on prescription.

“Grooming and hygiene products” are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of **“over-the-counter drugs.”**

"Marijuana" means all parts of the plant cannabis sativa L., whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, but shall not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, (except the resin extracted from it), fiber, oil or cake, or the sterilized seed from the plant which is incapable of germination.

"Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the medical condition.

“Over-the-counter-drug” means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66. The label must contain:

(A) a “Drugs Fact” panel; or

(B) a statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.

"Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the this state.

RULE 6. TAXATION OF DRUGS

Under RIGL 44-18-30 the sale, storage, use or other consumption of “drugs”, as defined in Rule 5, that are sold on prescriptions are exempt from sales and use tax. In addition, the sales, storage, use or other consumption, in this state, of medical oxygen and insulin; whether or not sold on prescription; and human blood are also exempt from sales and use tax.

RULE 7. TAXATION OF OVER-THE-COUNTER-DRUGS

For the period commencing October 1, 2011, sales and use tax, at the rates as provided in RIGL 44-18-18 and RIGL 44-18-20, shall apply to an “over-the-counter drug” as defined in Rule 5.

EXAMPLE:

A customer goes to a store with a prescription to purchase an “over-the-counter drug”. The pharmacist directs the customer to an aisle where the product is located. The pharmacist does NOT process the transaction as a prescription because the product is available as an “over-the-counter drug”. Transaction is subject to sales tax as the product is not sold on prescription.

RULE 8. TAXATION OF GROOMING AND HYGIENE PRODUCTS

“Grooming and hygiene products” as defined in Rule 5, are subject to sales and use tax, at the rates as provided in RIGL 44-18-18 and RIGL 44-18-20.

RULE 9. TAXATION OF DIETARY SUPPLEMENTS

A “dietary supplement” as defined in Rule 5, is subject to sales and use tax, at the rates as provided in RIGL 44-18-18 and RIGL 44-18-20. This means any product intended to supplement the diet, is required to be labeled as a dietary supplement as identifiable by the “Supplemental Facts” box found on the label and as required pursuant to Federal law. Dietary supplements sold on prescription are not subject to sales and use tax. Vitamins sold as “dietary supplements”; which usually come in tablet, capsule or pill forms are also subject to sales & use tax; however, vitamins are not subject to sales and use tax when sold on a prescription.

Reducing products are considered supplements and are also subject to sales and use tax. However, products that are represented for use as a sole item of a meal or of the diet are considered food products and are therefore exempt.

RULE 10. TAXATION OF MARIJUANA FOR MEDICAL USE

For the period commencing October 1, 2011, sales tax, at the rate as provided in RIGL 44-18-18, shall apply to the sale of “marijuana” for “medical use” as defined in Rule 5.

RULE 11. EFFECTIVE DATE

This regulation shall take effect on October 1, 2011 and shall amend and supersede regulation SU 07-60 promulgated January 2007.

RULE 12. CROSS REFERENCE

SU 09-59 “Food and Food Ingredients, Prepared Food/Meals, Candy, Soft Drinks, Dietary Supplements, and Alcoholic Beverages”

CCS 11-01 “Compassion Center Surcharge”

DAVID SULLIVAN
TAX ADMINISTRATOR