
REQUEST LETTER

03-019

NAME
ADDRESS
PHONE

Re: Request for Private Letter Ruling Regarding the Prescription Drug Exemption.

On behalf of our client COMPANY (“COMPANY or “the Client”), we respectfully request clarification of the Utah State Tax Commission’s (“the Commission”) interpretation of certain statutory provisions to become effective on July 1, 2004 as part of the Streamlined Sales Tax Project (“SSTP) legislation passed in March 2003. Specifically, our inquiry relates to the taxability of prescription drugs purchased by for-profit hospital facilities and administered to patients undergoing various medical procedures at the facilities.

FACTS

COMPANY owns and operates several for-profit hospitals within the state of Utah. During the course of patients’ treatment, attending physicians will prescribe certain drugs to be administered to the patients as part of the diagnosis, cure, mitigation, treatment or prevention of disease. For the purposes of this request, it may be assumed that the hospitals acquire the drugs pursuant to their pharmacy licenses, issued under the provisions of Utah Code Annotated §58-17a-303(2)(b). Also, the drugs are prescribed for the patients and administered under the direction of their attending physicians, with each drug specifically enumerated on patients’ medical charts.

LAW AND ANALYSIS

Current Law

Pursuant to Utah Code Annotated § 59-12-104(10), “sales of medicines” are currently exempt from sales and use tax. The term “medicine” is defined in Section 59-12-102(16) as:

- (a) Medicine means:
 - (i) Insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatric physician;
 - (ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and
 - (iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.
- (b) “Medicine” does not include:
 - (i) any auditory, prosthetic, ophthalmic, or ocular device or appliance; or

- (ii) any alcoholic beverage.¹

It may be ascertained from the above that Utah currently exempts prescribed or “prescription” medicines from sales and use tax, although Utah Code Annotated § 59-12-102(16) does not specifically reference the term “prescription medicines.” Utah does, however, provide a detailed or “prescription drugs” within Utah Code Annotated §58-17a-102(47). In this Section, the terms “prescription drug or device” or “legend drug or device” are defined as:

- (a) a drug or device which, under federal law, is required to be labeled with either of the following statements or their equivalent:
 - (i) “CAUTION: Federal law prohibits dispensing without prescription”; or
 - (ii) “CAUTION: Federal law restricts this drug to use by or on the order of a licensed veterinarian.
- (b) a drug or device that is required by an applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.²

As stated previously, although the term “prescription medicine” is not defined within Utah’s sales and use tax laws, the term “medicine” is defined to include “any medicine dispensed to patients to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician ...”³ Accordingly, there appear to be three requirements currently that must be satisfied in order for an item to qualify as an exempt “medicine” when dispensed to patients in a county or other licensed hospital:

¹Utah.Code Ann. § 59-12-102(16)

²Utah.Code Ann. §58-17a-102(47)

³Utah.Code Ann. § 59-12-102 (16)(a)(ii).

- i. The item must be considered a medicine;
- ii. The item must be prescribed for the patient; and
- iii. The item must be dispensed by a registered pharmacist *or* administered under the direction of a physician. (Emphasis added).

COMPANY purchases of prescription drugs administered to patients undergoing various medical treatment satisfy the three requirements of Utah Code Annotated § 59-12-102(16) and are therefore currently exempt from sales and use tax.

Law Effective July 1, 2004

As part of the comprehensive body of legislation passed in March 2003 related to the SSTP, effective July 1, 2004, the current definition of “medicine” contained in Utah Code Annotated § 59-12-102(16) will be replaced with the following definition of “drug,” contained in Utah Code Annotated §59-12-102(22):

- (a) “Drug” means a compound, substance, or preparation, or a component of a

- compound, substance, or preparation that is:
 - (i) recognized in:
 - (A) the official United States Pharmacopoeia;
 - (B) the official Homeopathic Pharmacopoeia of the United States;
 - (C) the official National Formulary; or
 - (D) a supplement to a publication listed in Subsections (22)(a)(i)(A) through (C);
 - (ii) intended for use in the:
 - (A) diagnosis of disease;
 - (B) cure of disease;
 - (C) mitigation of disease;
 - (D) treatment of disease; or
 - (E) prevention of disease; or
 - (iii) intended to affect:
 - (A) The structure of the body; or
 - (B) Any function of the body.
- (b) “Drug” does not include:
 - (i) food and food ingredients;
 - (ii) a dietary supplement;
 - (iii) an alcoholic beverage; or
 - (iv) a prosthetic device.⁴

⁴ Utah.Code Ann. § 59-12-102(22).

Also as part of the newly enacted legislation, the former exemption contained in Utah Code Annotated § 59-12-104(10) for “sales of medicines: will be replaced by the following definition, with the same statutory reference:

- (a) amounts paid for an item described in Subsection (10)(b) if:
 - (i) the item is intended for human use; and
 - (ii) the purchaser presents a prescription for the item; and
- (b)
 - (i) subsection (10)(a) applies to:
 - (A) a drug;
 - (B) a syringe; or
 - (C) a stoma supply; and
 - (ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule define the terms:
 - (A) “syringe”; or

(B) “stoma supply”;⁵

The term “prescription” is defined under the newly enacted Utah Code Annotated § 59-12-102(44) to mean:

... an order, formula, or recipe that is issued:

- (a)
 - (i) orally;
 - (ii) in writing;
 - (iii) electronically; or
 - (iv) by any other manner of transmission; and
 - (v) by a licensed practitioner authorized by the laws of a state.⁶

⁵ Utah Code Ann § 59-12-104(10).

⁶ Utah Code Ann § 59-12-102(44)

REQUEST FOR RULING

The Client respectfully requests clarification of the Commission’s interpretation of the newly enacted statutory provision that exempts amounts paid for “a drug” when “the purchaser presents a prescription for the item,” as contrasted with the current requirement that the sale of a “medicine” is exempt, in pertinent part, when “....dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician.”⁷

Under current laws, purchases of medicines by COMPANY facilities are clearly exempt as long as the patient to whom the medicine is ultimately administered has been issued a prescription for the medicine and the medicine is administered under the direction of a physician. The provision in the newly enacted drug exemption that requires the “purchaser” to present a prescription for a drug in order for the exemption to apply muddles somewhat the application of the exemption to purchases of drugs by a hospital, as compared with the current exemption language. Specifically, given that the hospital is the actual “purchaser” of the drugs, but the prescriptions are issued on behalf of patients of the hospital, with the drugs administered to same, it is not completely clear how this newly enacted provision will be interpreted by the Commission.

The SSTP legislation, as Adopted by the state of Utah, is generally intended to set forth more comprehensive and uniform definitions of certain medical terms, including drugs, rather than to effectively eliminate key exemptions that have been historically enjoyed by taxpayers. This appears to especially be the intent of the modifications to definitional and exemption provisions regarding drugs, whereby more comprehensive language is included in the newly enacted legislation to clarify that drugs used in all facets of patient care, including the diagnosis, cure, mitigation, treatment and prevention of disease, as compared with the current reference only to “treatment,” should be included within the ambit of the exemption statute. Additionally third party reference guides such as the United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States and the Official National Formulary are specifically listed to

provide objective guidance as to what will be considered a drug. Finally, the newly added provision expressly defining the term “prescription” offers further clarity over existing undefined references to the term in the current definition of “medicine.”

In accordance with the above, COMPANY respectfully requests a determination by the Commission that to the extent the drugs being purchased by COMPANY facilities would meet the definition of a “drug,” as set forth in Utah Code Annotated § 59-12-102(22), the requirement that a prescription be presented in order for the drug to be exempt should be interpreted to mean that the drug is exempt upon purchase by an COMPANY facility if the drug will be subsequently administered to a patient pursuant to a “prescription,” as defined in Utah Code Annotated § 59-12-102(44) and enumerated on a patient’s medical chart.

Should you have any questions or require additional information, please feel free to contact me at PHONE. Thank you for your prompt consideration of this matter.

⁷ Utah Code Ann. § 59-12-102(16)(a)(ii).

Sincerely,

NAME

RESPONSE LETTER

NAME

ADDRESS

PHONE

Re: Private Letter Ruling Request - Prescription Drug Sales Tax Exemption

Dear NAME:

You requested clarification of the Commission’s interpretation of laws to take effect on July 1, 2004, regarding a sales tax exemption for prescription medicine. Specifically, you asked that the exemption apply to drugs purchased by Hospital Corporation of America if the drug would subsequently be administered to a patient pursuant to a prescription.

The pertinent provisions of 59-12-104, were amended by House Bill (H.B.) 273. Subsequently, Senate Bill (SB) 3001 delayed enforcement of the amendments until July 1, 2005. (SB 3001 also delayed the effective date of the new definitions found in 59-12-102 until July 1, 2005.) The new version of 59-12-104 reads as follows:

The following sales and uses are exempt from the taxes imposed by this chapter:

(10) (a) amounts paid for an item described in Subsection (10)(b) if:

(i) the item is intended for human use; and

- (ii) (A) a prescription was issued for the item; or
- (B) the item was purchased by a hospital or other medical facility; and

(b) (i) Subsection (10)(a) applies to:

- (A) a drug;
- (B) a syringe; or
- (C) a stoma supply; and

(ii) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule define the terms:

- (A) "syringe"; or
- (B) "stoma supply";

The Commission interprets the amended statute to mean that drugs, as defined in 59-12-102 (22), intended for human use and purchased by a hospital or medical facility, are exempt from sales tax. Drugs intended for human use, for which a prescription is issued, are also exempt. If the compound, substance, or preparation, or a component of the aforementioned, is recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia, the official National Formulary, or a supplement to those publications, and it is intended for use in diagnosing, curing, mitigating, treating, or preventing any disease, or is intended to effect the structure of the body or function of the body, it meets the statutory definition of a drug.

If drugs, as defined above, are intended for human use and are either purchased by the hospital, or prescribed by a licensed practitioner, orally, electronically, in writing, or by other means of transmission, they are exempt from sales tax. Therefore, COMPANY will not incur a sales tax liability on its purchase of drugs intended for human use. If your facilities have internal pharmacies from which patients purchase drugs pursuant to a prescription, these purchases are also exempt from sales tax.

As you noted, the current law (59-12-104 (10)) exempts the sales of medicine (defined in 59-12-102 (16)) from sales tax. The Commission sees the amendments as continuing the essence of that exemption.

Should you have further questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/SR
03-019