
Opinion of the Tax Commissioner

Date Issued: February 26, 2001

Opinion No: 01-0002

Tax: Sales/Use

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Subject: Prescription Drugs

This request for an opinion of the Tax Commissioner was received on January 9, 2001. It concerns the application of sales and use taxes on the sale of prescription drugs to customers.

FACTUAL BACKGROUND

The taxpayer sells "certain products" considered as prescription drugs or legend drugs to various hospitals, clinics and doctor's offices for the use in the treatment of patients.

QUESTION FOR WHICH OPINION IS REQUESTED

Whether or not the sale of the products to hospitals, clinics and doctor's offices are exempt from sales and use tax pursuant to R.C. 5739.02(B)(18)?

OPINION

The Ohio sales and use tax law for determining the tax treatment of sales of prescription drugs is found in R.C. 5739.02. In pertinent part, the section reads:

"(B) The tax does not apply to the following:

* * *

(18) Sales of drugs dispensed by a licensed pharmacist upon the order of a licensed health professional authorized to prescribe drugs to a human being, as the term 'licensed health professional authorized to prescribe drugs' is defined in section 4729.01 of the Revised Code * * *."

In addition, O.A.C 4729-5-01(B) defines the term "dispense" to mean:

"the final association of a drug with a particular patient pursuant to the prescription, drug order, or other lawful order of a prescriber and the professional judgement of and the responsibility for: interpreting, preparing, compounding, labeling, and packaging a specific drug."

From the information and business brochure provided, the medical items such as fleet prep kits, XXXX colonic lavage set and XXXX bag do not qualify as prescription drugs. To the extent your other products qualify as prescription drugs, it does not appear your company is engaged in dispensing these drugs. Since your company does not associate these drugs with a particular patient pursuant to the order of a physician, rather you supply the doctors offices, hospitals and medical clinics in bulk quantity, there is no dispensing to a patient. Accordingly, it is the opinion of the Tax Commissioner that R.C. 5739.02(B)(18) does not apply in your situation and all sales of prescription drugs and other products to doctors, hospitals, and clinics are subject to the sales or use tax unless the purchaser is statutorily exempt from tax or provides XXXX with a properly executed exemption certificate as outlined in Ohio Administrative Code 5703-9-03.

This opinion applies only to this taxpayer. The tax consequences stated in this opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the taxpayer to be aware of such changes. R.C. 5703.53(E).

Thomas M. Zaino
Tax Commissioner