



CONSUMERS' SALES TAX EXEMPTION For Drugs, Durable Medical Equipment, Mobility Enhancing Equipment And Prosthetic Devices Dispensed Upon Prescription

The West Virginia sales and use tax laws contain many exemptions. This publication addresses the purchase of certain medical goods dispensed upon prescription; it is not a substitute for tax laws or regulations.

The purchase of drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease shall be exempt from the consumers' sales and use tax under the following circumstances:

The purchase of drugs, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease shall be exempt from the consumers' sales and use tax.

- Until June 30, 2016, the exemption for durable medical equipment set forth by W. VA. CODE § 11-15-9i (2011) can be asserted by health care providers and individuals who purchase durable medical equipment to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease when the durable medical equipment is used.
- Between July 1, 2016, and June 30, 2018, the exemption for durable medical equipment set forth by W. VA. CODE § 11-15-9i (2011) is only available to individuals who purchase durable medical equipment to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease when the durable medical equipment is used.
 - o Exclusively by the purchaser or another individual,
 - o Predominantly in his or her home environment.
- After July 1, 2018, the exemption for durable medical equipment set forth in W. VA. CODE §11-15-9i (2011) will be available to both home users and health care providers who purchase durable medical equipment to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease.
- Drug samples are not taxed if given by a pharmaceutical manufacturer to physicians to be dispensed upon prescription for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease.
- Purchases of non-prescription drugs and other over-the-counter healthcare items are subject to sales tax.

When the exemption applies in accordance with these guidelines, the exemption from the tax is deemed to be a "per se" exemption.

For purposes of this exemption, "health care provider" means any person licensed to prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. "Health care provider" includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services or veterinary services.

Definitions for exempt items are set forth in W. VA. CODE §11-15B-2 (2012):

"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;
- (B) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease; or
- (C) Intended to affect the structure or any function of the body.

"Durable medical equipment" means equipment, including repair and replacement parts for the equipment, but does not include "mobility-enhancing equipment", which

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Generally is not useful to a person in the absence of illness or injury; and is not worn in or on the body. Examples: Home or portable oxygen equipment, home air fluidized beds, blood glucose monitors, commode chairs, nebulizers and infusion pumps.

"Mobility-enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include "durable medical equipment", which:

- (A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
- (B) Is not generally used by persons with normal mobility; and
- (C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Examples: Walkers, wheelchairs, crutches, canes and orthotic shoes.

"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 this state to issue prescriptions.

"Prosthetic device" means a replacement, corrective or supportive device, including repair and replacement parts for the device, worn on or in the body, to:

- (A) Artificially replace a missing portion of the body;
- (B) Prevent or correct physical deformity or malfunction of the body; or
- (C) Support a weak or deformed portion of the body.

Examples: Artificial limbs, prosthetic intraocular lenses, cardiac pacemakers, artificial eyes, dental fillings and crowns, enteral nutrition pumps and ostomy supplies.

For assistance or additional information, you may call a Taxpayer Service Representative at:

1-800-WVA-TAXS
(1-800-982-8297)

www.tax.wv.gov