

280-RICR-20-70-47

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 70 – SALES AND USE TAX

PART 47 – Drugs, Medicines, and Health Care Products

47.1 Purpose

This regulation implements R.I. Gen. Laws Chapters 44-18 and 44-19. 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.

47.2 Authority

This regulation is promulgated pursuant to R.I. Gen. Laws Chapters 44-18 and 44-19. These rules have been prepared in accordance with the requirements of R.I. Gen. Laws §§ 42-35-3(b), 44-1-1 *et seq.* and 44-19-33.

47.3 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 R.I. Gen. Laws Chapters 44-18 and 44-19 and other applicable state laws and regulations.

47.4 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.

47.5 Definitions

- A. “Dietary supplement” means any product, other than "tobacco," intended to supplement the diet that:
 - 1. Contains one or more of the following dietary ingredients:
 - a. A vitamin;
 - b. A mineral;

- c. An herb or other botanical;
 - d. An amino acid;
 - e. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and
 - 2. 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
 - 3. 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.
- B. "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 of any function of the body.
- C. "Drug" shall also include insulin and medical oxygen whether or not sold on prescription.
- D. "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."
- E. "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.

- F. "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.
- G. "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. "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.
- H. "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.

47.6 Taxation of Drugs

Under R.I. Gen. Laws § 44-18-30 the sale, storage, use or other consumption of "drugs", as defined in § 47.5 of this Part, 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.

47.7 Taxation of Over-the-Counter Drugs

- A. For the period commencing October 1, 2011, sales and use tax, at the rates as provided in R.I. Gen. Laws §§ 44-18-18 and 44-18-20, shall apply to an "over-the-counter drug" as defined in § 47.5 of this part.
- B. 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.

47.8 Taxation of Grooming and Hygiene Products

"Grooming and hygiene products" as defined in § 47.5 of this Part, are subject to sales and use tax, at the rates as provided in R.I. Gen. Laws §§ 44-18-18 and 44-18-20.

47.9 Taxation of Dietary Supplements

- A. A “dietary supplement” as defined in § 47.5 of this Part, is subject to sales and use tax, at the rates as provided in R.I. Gen. Laws §§ 44-18-18 and 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.
- B. 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.

47.10 Taxation of Marijuana for Medical Use

For the period commencing October 1, 2011, sales tax, at the rate as provided in R.I. Gen. Laws § 44-18-18, shall apply to the sale of “marijuana” for “medical use” as defined in § 47.5 of this Part.

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