

Drugs

117A

Sales Tax
Fact Sheet

This fact sheet describes the definitions of drugs and provides a summary of how Minnesota sales and use tax applies to these items.

For information on how sales and use tax applies to medical equipment and other health care products refer to the fact sheets listed below:

- **Durable Medical Equipment**, Sales Tax Fact Sheet 117B
- **Mobility Enhancing Equipment**, Sales Tax Fact Sheet 117C
- **Prosthetic Devices**, Sales Tax Fact Sheet 117D
- **Health Product Exemptions**, Sales Tax Fact Sheet 117E
- **Grooming and Hygiene Products**, Sales Tax Fact Sheet 117F

Drugs

“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, that is:

- recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;
- intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- 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 Code of Federal Regulations, title 21, section 201.66. The label must include:

- a “Drug Facts” panel; or
- a statement of active ingredients with a list of those ingredients contained in the compound, substance or preparation.

Over-the-counter drugs do not include grooming and hygiene products, regardless of whether they otherwise meet the definition. “Grooming and hygiene products” are soaps, cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and sunscreens. Refer to Fact Sheet 117F for more information on grooming and hygiene products.

All drugs for human use, including prescribed drugs and over-the-counter drugs are exempt. Vitamins and minerals are not included in the definition of over-the-counter drugs. They are taxable as dietary supplements. Refer to Fact Sheet 102E, Dietary Supplements for additional information.

To determine if an over-the-counter item is an exempt drug, you must look at the label to see if the label includes a “Drug Facts” panel, or a list of active ingredients. For example, eye drops are taxable unless they have an *active ingredient* or have a *Drug Facts* panel on the label.

Examples of exempt prescribed and over-the-counter drugs are:

- acne medications
- alcohol (rubbing)
- analgesics (aspirin, acetaminophen, ibuprofen, ketoprofen, naproxen, etc.)
- antacids
- antibiotic creams and ointments
- antifungal creams and sprays
- antihistamines
- antiseptics (Betadine, iodine)
- birth control (pills and patches and implants)
- burn remedies
- Chapstick, Blistex
- contraceptives (creams, gels, foams and medicated condoms)
- cold and cough medicines, drops and lozenges
- contact lens solutions
- decongestants
- dermal fillers (injectable)
- dialysis dialysate solution
- diaper rash creams (Desitin, Balmex)
- enema preparations
- eye drops (Visine, tears and lubricants, but not saline solution)
- gases – medical grade (air, carbon dioxide, helium, nitrogen, oxygen)
- hand sanitizers
- hydrogen peroxide
- insulin
- laxatives
- nutrition formulas (enteral and parenteral with a drug facts label)
- oxygen
- prescription medicines
- radioactive isotopes
- rubs (Vicks, Ben-Gay)
- sleeping pills
- smoking cessation products such as Nicorette gum, lozenges and patches
- Sterile water (for injections)
- Sterile normal saline .9% (IV or irrigation)
- vaccines
- Vaseline
- yeast infection medications

Often, categories of products include both taxable and exempt items. For example, some types or brands of baby powder are exempt because they have active ingredients, while others are taxable because they have no active ingredients. Remember to check the label to determine whether a specific item is exempt or taxable.

Combination sales (bundled transactions)

Prior to January 1, 2008, taxable and nontaxable items sold together for a single price were taxable. Example: The sale of a first aid kit that included over-the-counter drugs and non-medicated Band-Aids was taxable because non-medicated Band-Aids are taxable.

However, beginning January 1, 2008, when a bundled transaction includes drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies, special rules apply. The sale may or may not be taxable. The sale is taxable if:

- 1) the seller's purchase price of the taxable items in the transaction is more than 50% of the total purchase price of all of the items in the transaction, or
- 2) the seller's sales price of the taxable items in the transaction is more than 50% of the total sales price of the transaction.

Sellers cannot use a combination of the purchase price and sales price when making the 50% determination for a transaction.

Use tax due. Beginning January 1, 2008, use tax is due on the seller's cost of taxable items included in the bundle if:

- 1) the retail sale of the bundled transaction is not taxable, **and**
- 2) the seller's purchase price of all taxable items in the bundled transaction is more than \$100.

Example 1. A medical stapler loaded with staples for sutures is sold for \$10.00. The seller's purchase price of the stapler is \$2.00 and the purchase price of the staples is \$6.00. The sale of the stapler is not taxable since the taxable item in the sale (stapler) is less than 50% of the total purchase price of all the items in the sale. The seller does not owe use tax on the taxable items in the transaction since their purchase price is less than \$100.00.

Example 2. Surgical kits that contain a prosthetic device and disposable surgical instruments for implanting the prosthetic device are sold for \$500.00. The seller's purchase price of the non-taxable prosthetic device is \$300.00 and their cost of the taxable surgical instruments is \$150.00. Sales of the surgical kits are not taxable because the seller's purchase price of the taxable items (surgical instruments) is less than 50% of the total purchase price of all of the items in the sale. The seller owes use tax on their cost of the taxable items in the sale since they cost the seller more than \$100.00.

Brand names are shown for illustration purposes only and do not imply sole representation in any category.

References:

M. S. 297A.67, Subd. 7, Drugs; Medical Devices

Be sure to see these fact sheets:

Durable Medical Equipment, #117B
Mobility Enhancing Equipment, #117C
Prosthetic Devices, #117D
Health Product Exemptions, #117E
Grooming and Hygiene Products, #117F
Health Care Facilities, #172

Other fact sheets you may need:

Sales to Government, #142
Use Tax for Businesses, #146
Local Sales and Use Taxes, #164