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# PARISH OF RAPIDES

## SALES AND USE TAX DEPARTMENT

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REF: Orthotic, Prosthetic, Medical Devices, Patient Aids, and Drugs

Retail sale of orthotic, prosthetic, medical devices, patient aids, and drugs sold to an individual, medical service provider or healthcare facility and payment is via cash or private insurance is subject to local sales tax.

Before reviewing the statutes, we must first review the “rules” and “definitions” for medical devices and drugs.

Rules for drugs and medical devices – If the drug or medical device is used once **ON** or **IN** a patient, it is exempt from state sales tax but subject to local tax. Examples: needles, sutures, drugs, gauze, etc.

Rules for medical devices (**Dentist**) – If the medical device is used once **ON** or **IN** and **REMAINS** in a patient’s mouth, it is exempt from **STATE** and **LOCAL** sales tax. Examples: crowns, fillings, braces, dentures, and drugs are exempt from state and local sales tax.

Definitions that pertain to prosthetic, orthotic, medical devices, patient aids and drugs.

R.S. 47:305(D) provides, in part, an exemption from **state** sales or use tax upon the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state for orthotic and prosthetic devices and patient aids prescribed by physicians or licensed chiropractors for personal consumption or use.

Orthotic, by definition, means a branch of mechanical and medical science that deals with the support and bracing of weak or ineffective joints or muscles, and such things as orthopedic shoes, braces, crutches, wheelchairs, surgical supports, and traction equipment are exempt from taxation, while such items as prescription eyeglasses and hearing aids are not covered by the exemption.

Prosthesis, by definition, means the replacement of a missing part of the body, as a limb or eye, by an artificial substitute, and such things as artificial eyes, legs, or arms are exempt from state taxation. Toupees, eyeglasses, corrective lenses, and similar items are not covered by the exemption.

Patient aids mean such equipment as sickroom supplies and other tangible personal property used for the convenience and comfort of the patient. Examples: humidifiers, oxygen equipment, mattress pads, hospital beds, suction machines and supplies and feeding tubes.

Medical Devices are prescribed by physician and given/inserted/administered to patient. Examples: Drugs, feeding tubes, syringes, surgical kit.

R.S. 47:301(20) "Drugs" includes all pharmaceuticals and **medical devices** which are prescribed for use in the treatment of any medical disease.

In all instances, orthotic, prosthetic, medical devices and patient aids must be prescribed by a physician or a licensed chiropractor for personal use or consumption in order for the sale to be exempt for **state** sales tax purposes. Further, the rental tax and sales tax for repairs to orthotic and prosthetic devices and patient aids are not exempted under R.S. 47:305(D).

R.S. 47:305(D)(1) – (5) are the medical exemption statutes.

**State exemptions:**

- Drugs
- Orthotic, eyeglasses, contacts, prosthetic devices, wheelchairs, and wheelchair lifts
- Ostomy, ileostomy or colostomy device, and catheters
- Patient aids prescribed by physician or chiropractor for home use
- Medical devices used exclusively by the patient
- Adaptive driving equipment

**State and Local exemptions:**

- Purchase or sale of prosthetic device by patient **OR** medical provider in which payment will be made by Medicaid Insurance program.
- Dental - Orthotic and prosthetic devices, prostheses and restorative materials **AND** all dental devices
- Cancer and related chemotherapy drugs administered in physician's office
- Drugs sold through Medicaid (Title XIX)
- Drugs sold through Children's Health Insurance (Title XXI) – Bayou Health

Title XVIII, which became known as Medicare, includes Part A, which provides hospital insurance for the aged, and Part B, which provides supplementary medical insurance. Title XIX, which became known as Medicaid, provides for the states to finance health care for individuals who were at or close to the public assistance level with federal matching funds.

Title XXI of the Social Security Act is LA CHIP/Bayou Health

Orthotic/prosthetic devices are exempt from **state** sales/use tax per LA. R.S. 47:305(D)(1)(k)(i). The orthotic/prosthetic devices are exempt from **state** sales tax only is further supported by LA. R.S. 47:305(D)(4)(a).

**Prosthetic devices** are exempt from **local** sales/use tax per LA R.S. 47:305(D)(1)(k)(II) when purchased by an individual or medical service provider when used or consumed by individuals pursuant to a prescription by a physician when the individual is covered by the state of Louisiana Medicaid insurance program or Medicaid insurance program (such as Bayou Health). When a prosthetic device is "purchased by a medical provider" for a particular patient that is covered by Medicaid, the prosthetic device is exempt from state and local sales tax.

LA R.S. 47:337.9(F) Notwithstanding any provision of law to the contrary, prescription drugs purchased through or pursuant to a Medicare Part B and D plan shall be exempt from the sales and use taxes imposed by any local governmental subdivision, school board, or other political subdivision whose boundaries are not coterminous with the state.

It is our position that the purchase of a prosthetic device is exempt from local sales tax if the prosthetic device is for a particular patient (serial numbered or identifiable to a patient) and the procedure is covered by Medicare.

Any business billing an "Insurance Company" should report their sales via "Cash Basis". Pharmacies and medical supply businesses conduct retail sales or rentals that are paid via cash, private insurance, Medicaid and Medicare. Even though the following statute states pharmacy, this statute applies to any business that bills insurance companies.

LA. R.S. 47:337.11.1. Local sales and use tax; prescription drugs and pharmacist services; requirements

- A. Upon the sale of prescription drugs and pharmacist services, a pharmacy or pharmacist shall be responsible for collecting any sales and use tax levied by a local political subdivision of this state and for remitting the amount of such tax to the levying authority. It shall be the responsibility of the health insurance issuer to reimburse the pharmacy or pharmacist the amount of such tax in certain cases in which health insurance coverage for prescription drugs and pharmacist services exists, depending on the terms and conditions of the insured's agreement with its member or insured. All contracts executed by a health insurance issuer after January 1, 2009, which includes health insurance coverage for prescription drugs and pharmacist services shall clearly define the responsibility of the health insurance issuer or the health insurance issuer's member or insured for the payment of local taxes on the sale of prescription drugs and pharmacist services. Upon receipt of an electronic transaction from a pharmacy indicating the sale of a prescription drug or the rendering of the pharmacist services and specifying the amount of any sales and use tax, a health insurance issuer or its agent shall advise the pharmacy electronically of the applicable sales and use tax to be reimbursed to the pharmacy.

Based on the last sentence, I advise my pharmacies/medical supply businesses to report prescription drug/medical device sales on the cash basis based on the amount PAID by the insurance company (as reported on their remittance report or EOB or PBM Remittance Advice Statement).

Please do not hesitate to contact me at (318) 445-0296 Ext 3008 if more information is needed.

Sincerely,



David K. Humphries  
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