

701—287.7(422,423) Prescription drugs and devices. Sales of prescription drugs and devices as defined in 20.7(1) and dispensed for human use or consumption in accordance with 20.7(2) and 20.7(3) shall be exempt from sales tax. On and after July 1, 1992, rentals of prescription devices as defined in subrule 20.7(1) below are exempt from service tax. Gross receipts from the sales of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption are exempt from tax. On and after July 1, 1992, gross receipts from the sales of any oxygen purchased for human use or consumption (whether prescribed or not) are exempt from tax.

287.7(1) Definitions of “prescription drug” for two periods of time.

a. For sales occurring between July 1, 1987, and June 30, 1993, a “prescription drug” is any of the following:

(1) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public,

(2) A drug or device that under federal law is required prior to being dispensed or delivered to be labeled with the following statement: “Caution: Federal law prohibits dispensing without a prescription”, or

(3) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

b. For sales or rentals occurring on and after July 1, 1993, a “prescription drug” and “medical device” are defined as follows:

(1) A “medical device” means equipment or supplies, including orthopedic or orthotic devices, intended to be prescribed by a practitioner for human use to an ultimate user.

(2) A “prescription drug” is a drug intended to be dispensed for human consumption to an ultimate user pursuant to a prescription or medication order from a practitioner.

(3) An “ultimate user” is any individual who has lawfully obtained and possesses a prescription drug or medical device for the individual’s own use or for the use of a member of the individual’s household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The phrase does not include any entity created by law, such as a corporation or partnership.

On and after July 1, 1993, the sale or rental of a medical device or a prescription drug is exempt from tax only if the device or drug is intended to be prescribed or dispensed to an ultimate user. A drug or device is intended to be prescribed or dispensed to an ultimate user only if the drug or device is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user’s body.

EXAMPLE A: A sports medicine clinic purchases a new type of device which scans the inside of the human body to disclose injured soft tissue. The device can be used only on the order of a practitioner. The device is prescribed, but since, by its very nature, the device cannot be dispensed to an ultimate user, its sale is not exempt from tax.

EXAMPLE B: Pursuant to a practitioner’s prescription, a pacemaker is inserted in a patient’s body. The pacemaker is dispensed to an ultimate user and its sale is exempt from tax.

EXAMPLE C: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any medical device or drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption, shall be deemed a device or drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE A: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE B: A federal law permits but does not require the painkiller mentioned in Example A to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 20.8(422,423), 20.9(422,423) and 20.10(422,423) for examples of medical devices sold without a prescription but exempt from tax.

287.7(2) *Persons authorized to dispense prescription drugs or prescription devices.* In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

- a. Any store or other place of business where prescription drugs are compounded, dispensed or sold by a person holding a license to practice pharmacy in Iowa, and where prescription orders for prescription drugs or devices are received or processed in accordance with pharmacy laws.
- b. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.
- c. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.
- d. Persons licensed by the state board of podiatry to engage in the practice of podiatry in Iowa.
- e. Persons licensed by the state board of dentistry to practice dentistry in Iowa.
- f. Persons licensed prior to May 10, 1963, to practice osteopathy in Iowa.
- g. Persons licensed by the optometry examiners as therapeutically certified optometrists.
- h. Persons licensed by the board of chiropractic examiners to practice chiropractic in Iowa when dispensing in accordance with Iowa Code chapter 151.
- i. Any other person authorized under Iowa law to dispense prescription drugs or devices in this state.
- j. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

287.7(3) *Disposition of prescription drugs and devices.* Prescription drugs or devices may be dispensed either directly from one of the persons licensed in 20.7(2) who may also prescribe drugs or devices or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in 20.7(2) who may also prescribe drugs or devices shall be sufficient evidence that a drug or device is exempt from sales tax. When a person who prescribes a drug or device is also the dispenser, the drug or device will not require a prescription by such person but the drug or device must be recorded as if a prescription would have been issued or required. If this condition is met, the gross receipts from the sale of the drug or device shall be exempt from sales tax.

287.7(4) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under 20.7(2) shall be required to collect sales tax on any prescription drugs or devices.

287.7(5) *Prescription drugs and devices purchased by hospitals for resale.* This subrule is applicable to both nonprofit and for-profit hospitals for periods prior to July 1, 1998. On and after that date the subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (1) the drug or device is actually transferred to the patient; (2) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (3) the hospital and the patient intend the transfer to be a sale; and (4) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. See rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also see rule 701—18.59(422,423) for the exemption applicable to all purchases of goods and services purchased on or after July 1, 1998, by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A: A hospital purchases a bone saw blade and uses the blade to cut the bone of patient X during hip replacement surgery. This dulls the blade to the point that the blade cannot be used again and is discarded. The hospital bills patient X for "one bone saw blade—\$30.00". In spite of the separate charge for an identifiable piece of property, the hospital did not purchase the bone saw blade for resale. The blade was used up by the hospital, not transferred to the ownership of X. Since there was no transfer, there was no sale, thus no purchase for resale.

EXAMPLE B: A hospital buys lotion for use in massages given to patients by nurses aides. In spite of the fact that one can argue that a transfer of ownership of the lotion from hospital to patient occurred, the lotion was not purchased for resale. No real intent to sell the lotion to patients ever existed; the lotion was not transferred to patients in a quantity capable of a definite price value; and there is no separate charge for the lotion.

A hospital's purchase of a prescription drug or device for purposes other than resale will still be exempt from tax if a device or drug is intended to be prescribed to an ultimate user and the hospital's use of the drug or device is otherwise exempt under 20.7(1).

This rule is intended to implement Iowa Code section 422.45.

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