

NOTICE OF INTENT

Department of Revenue Policy Services Division

Limited Local Sales Tax Exemption for Cancer and Related Chemotherapy Prescription Drugs (LAC 61:I.4401)

Under the authority of R.S. 47:305(D)(4)(b) and (c), R.S. 47:337.2, R.S. 47:337.9(C)(17), and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4401 to provide with respect R.S. 47:305(D)(4)(b). This statute provides that the administration of prescription drugs used exclusively by the patient in the medical treatment of various diseases or injuries when administered exclusively to the patient by a physician, nurse, or other health care professional in a physician's office where patients are not regularly kept as bed patients for twenty-four hours or more, shall be a professional service.

These proposed amendments are related to a "common sales tax law", as contemplated by R.S. 47:337.2(C)(1)(b). Input into the drafting of this Notice of Intent has been sought and received from the Board of Directors of the Louisiana Association of Tax Administrators (LATA), as required by R.S. 47:337.2(4).

Although R.S. 47:305(D)(4)(b) applies to both state sales and use taxes and to the sales and use taxes of political subdivisions of the state, this statute providing with respect to the taxation of chemotherapy drugs will primarily affect local sales and use taxation. R.S. 47:305(D)(1)(j) provides an exemption on the sale, use, distribution, or the storage for use or consumption of drugs prescribed by a physician or dentist. The exemption under R.S. 47:305(D)(1)(j) applies solely for purposes of state sales and use tax, and under R.S. 47:305(D)(4)(a) does not apply to sales and use taxes imposed by any school board, municipality or other local taxing authority.

Chemotherapy drugs are already fully exempt from state sales and use taxes when prescribed by physicians, regardless of whether administered in a physician's office or elsewhere. These proposed amendments discuss the limited conditions in which local sales and use the taxes will not apply to sales to patients of chemotherapy drugs.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 44. Sales and Use Tax Exemptions

§4401. Various Exemptions From the Tax

A. - G.1. ...

2.a. All of the exemptions provided by R.S. 47:305(D), except for the exemptions on food and drugs, orthotic and prosthetic devices, and patient aids prescribed by physicians or licensed chiropractors for personal consumption or use apply to state and local sales or use tax. The exemptions for food and drugs, orthotic and prosthetic devices, and patient aids prescribed by physicians or licensed chiropractors apply only to state sales or use tax.

b.i. R.S. 47:305D(4)(b) provides a limited exemption from local sales and/or use taxes on the procurement of prescription chemotherapy drugs administered to the patient for treatment of cancer and also includes prescription drugs related to chemotherapy treatment administered in connection with the treatment of cancer patients.

ii. In order for these prescription drugs to be eligible for exemption, they must be procured by a physician who specializes in the diagnosis and treatment of cancers and administered by the physician, nurse, or other health care professional in the physician's office where patients are not kept as bed patients for twenty-four hours or more. It is the intent of this limited exemption to apply only to medications that have been prescribed by and administered in the physician's office at the time medical services are delivered. The issuance of a prescription for personal use of similar drugs away from the physician's office will be fully taxable at the local level. This exemption shall not apply to medical supplies or equipment used to administer any treatment to patients.

iii. Chemotherapy drugs are those drugs that kill or inhibit the growth of cancerous cells or tumors and have been approved by the Food and Drug Administration for use in the treatment of cancers. Chemotherapy drugs may be used individually or in combination to achieve optimum results. Language dealing with "related chemotherapy prescription drugs" (emphasis added) may present difficulties in interpretation and therefore, this regulation is being adopted to establish certain guidelines to govern this limited exemption. The treatment of diagnosed cancer with prescribed drugs and chemotherapy relates to professional medical services delivered to the patient in a physician's office where patients are not regularly kept as bed patients for periods beyond 24 hours. These prescribed drugs must be administered by the physician, his/her nurse, or other health care professional orally or intravenously during the treatment. These exempt prescribed drugs would include medications prescribed to treat the side effects of chemotherapy, such as nausea and blood-related side effects. Such prescription drugs must be medically necessary, prescribed as part of an established protocol and appropriate in light of clinical standards of medical practice. Procurement of these and similar drugs by hospitals, hospital clinics, and other facilities that do not qualify as the physician's office shall not be exempt from local taxation under this exemption. Purchases of these and similar drugs that are prescribed for treatment in medical conditions other than cancer would also not be exempt under this statute from local taxation. Local taxing authorities have developed a specific Local Exemption Certificate which is to be acquired and employed by those persons who are found to be eligible for this exemption. Each local tax administrator or collector is authorized to issue a local exemption certificate that has been approved by the Board of Directors of the Louisiana Association of Tax Administrators (LATA) upon application found suitable by said collector.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of these proposed amendments will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Revenue has conducted a Regulatory Flexibility Analysis and found that the proposed adoption of this Rule will have negligible impact on small businesses.

Public Comments

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, January 26, 2010.

Public Hearing

A public hearing will be held on Wednesday, January 27, 2010, at 2 p.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Limited Local Sales Tax Exemption for Cancer and Related Chemotherapy Prescription Drugs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Act 42 of the 2002 Regular Legislative Session amended R.S. 47:305(D)(4)(b) to provide that sales taxes authorized and imposed by any school board, municipality or other local taxing authority shall not apply to the procurement and administration of cancer and related chemotherapy prescription

drugs used exclusively by the patient in the patient's medical treatment when administered exclusively to the patient by a physician, nurse, or other health care professional in a physician's office where patients are not regularly kept as bed patients for twenty-four hours or more. This proposed rule was drafted by the Louisiana Association of Tax Administrators in order to provide for local tax authorities' administration of this exemption in a uniform manner consistent with the underlying statute.

This proposed rule is related to a "common sales tax law", as contemplated by R.S. 47:337.2(C)(1)(b), so the rule ostensibly affects both state and local sales and use taxes. Although the amended R.S. 47:305(D)(4)(b) applies also to state sales and use taxes, that statute and this proposed rule will have no effect on the payment of sales and use taxes to the State of Louisiana. Another statute that has been in effect since the 1970's, R.S. 47:305(D)(1)(j), provides a broad exemption on the sale, use, distribution, or the storage for use or consumption of drugs prescribed by a physician or dentist. This existing statute is so broad as to already include an exemption from state sales and use taxes on cancer and chemotherapy prescription drugs used in medical treatment when administered exclusively to the patient by a physician, nurse, or other health care professional in a physician's office.

The broad exemption for prescription drugs under R.S. 47:305(D)(1)(j) applies solely for purposes of state sales and use tax, and under R.S. 47:305(D)(4)(a) does not apply to sales and use taxes imposed by any school board, municipality or other local taxing authority. Act 42 was intended to mandate a local sales and use tax exemption on only this limited category of prescription drugs.

The Implementation of this proposed rule will have only minimal impact on the Department of Revenue's costs. Costs will be incurred to publish the Notice of Intent and the final rule in the Louisiana Register, to conduct the public hearing required under the Administrative Procedures Act, and to publish the Notice of intent and the final rule on the department's web site. These costs can be absorbed with the department's existing budget.

The department believes that local governments will also incur only minimal costs in implementing this rule that can likewise be absorbed within their existing budgets.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Fiscal Note on Act 42 of the 2002 Regular Session estimated local revenue losses from the passage of the Act of \$30,000 of local revenue on a statewide basis. These revenue reductions by now have been absorbed into the tax collection budgets of affected local governments. Local sales tax revenues will be neither increased nor decreased by the adoption of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Medical professionals who administer chemotherapy drugs and their patients will financially benefit from the rule and associated Act in the amounts indicated in the preceding paragraph.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should provide a minimal but positive effect on competition and employment in industries that manufacture, sell, and administer chemotherapy drugs.

Cynthia Bridges
Secretary
0912#020

Robert E. Hosse
Staff Director
Legislative Fiscal Office