

RULE

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, amends 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 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 Rule was 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 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 Division, LR 29:1520 (August 2003), LR 30:2864 (December 2004), LR 36:0000 (May 2010).

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