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Directive 86-32: Over-The-Counter Medicine Sold on a Doctor's Prescription

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FACTS: Taxpayer Baker suffers from a severe case of arthritis. Her physician writes her a prescription for aspirin and several other over-the-counter medications to relieve the pain. Baker purchases the aspirin and other medicines from her neighborhood pharmacy on this prescription.

ISSUE: Is the sale of the aspirin and other over-the-counter medicines to Taxpayer Baker on prescription exempt from the Massachusetts sales tax?

DISCUSSION: Massachusetts law imposes a five percent (5%) sales tax on retail sales of tangible personal property in Massachusetts, unless otherwise exempt. G.L. c. 64H, § 2. Generally, the sale of medicine which can be purchased without a prescription (over-the-counter medicine) is subject to sales tax. Section 6 of chapter 64H, however, exempts from sales tax "sales of medicines...on – prescriptions of registered physicians." Thus, when over-the-counter medicines are prescribed by a physician and sold on a written prescription, they are exempt from sales tax. G.L. c. 64H, § 6(l). To substantiate the exempt sale, the vendor making the sale must keep adequate records, including the prescription and other records normally maintained for prescription drugs. G.L. c. 62C, § 25.

DIRECTIVE: The sale of aspirin and other over-the-counter medicines to Taxpayer Baker is exempt from sales tax because the medicines are sold on a doctor's written prescription. To substantiate the exempt sale, the pharmacy must keep adequate records including the prescription and other records normally maintained for prescription drugs.

REFERENCE: G.L. c. 62C, § 25; G.L. c. 64I, §§ 2, 6(l).

/s/Ira A. Jackson
Ira A. Jackson
Commissioner of Revenue

December 31, 1986

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 C.M.R. § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive

only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.

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