

Directive 15-1: Sales Tax Exemption for Medical Marijuana

Introduction: Chapter 369 of the Acts of 2012, *An Act for the Humanitarian Use of Medical Marijuana* ("the Act") provides for the legalized sales of marijuana, products containing marijuana such as food, tinctures, aerosols, oils and ointments as well as related supplies or educational materials to qualifying patients or their personal caregivers in the Commonwealth by medical marijuana treatment centers.

Issue: How does the sales tax apply to sales by medical marijuana treatment centers?

Directive: The sales tax exemption for medicine on prescription in G.L. c. 64H, § 6(l) applies to sales of marijuana and products containing marijuana to a qualifying patient or the patient's personal caregiver pursuant to a written certification by a licensed physician. Any other supplies, educational materials or other items sold by the medical marijuana treatment center are subject to tax unless another exemption applies.

Discussion: The Act limits legal sales of marijuana to qualifying patients with a debilitating medical condition on written certification of a licensed physician. The Act defines those terms as follows:

"Qualifying patient" shall mean a person who has been diagnosed by a licensed physician as having a debilitating medical condition.

"Debilitating medical condition" shall mean: Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis and other conditions as determined in writing by a qualifying patient's physician.

"Written certification" means a document signed by a licensed physician, stating that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. Such certification shall be made only in the course of a bona fide physician-patient relationship and shall specify the qualifying patient's debilitating medical condition(s).

G.L. c. 64H, § 6(l) exempts sales of "medicine ... on prescriptions of registered physicians." The term "medicine" is not further defined in the sales tax statute, but the Department looked to the common meaning of that term in DD 91-5, which stated:

Although the Massachusetts tax statutes do not define "medicine," the Department's interpretation of the term accords with its common meaning, as evidenced by the definition in Webster's New Collegiate Dictionary (1979) (medicine is "a substance or preparation used in treating disease;....something that affects well-being").

A prescription has been defined as including "any order for medicines written or transmitted by any means of communication by a duly licensed and registered physician authorized by the laws of the state to prescribe such medicines and intended to be dispensed by a registered physician or pharmacist." The Department has previously applied the 6(l) exemption to both medicines that are classified by law generically as "prescription medicines" (those which may be dispensed legally only by prescription); and medicines that are commonly regarded as "over-the-counter medicines" (those which may be dispensed legally without a prescription), but which nonetheless are dispensed pursuant to a prescription. DD 91-5.

In authorizing legal sales of medical marijuana to certain seriously ill persons, the Act has characterized marijuana as a "medicine" in the broader sense of something that affects well-being. Although the Act refers to a certification by a licensed physician rather than a prescription by a registered physician, the purposes of those documents issued by physicians are substantially similar. For these reasons, the Department has concluded that the exemption in G.L. c. 64H, § 6(l) applies to sales of medical marijuana and products containing marijuana. The exemption described in this Directive applies only to sales of marijuana for medical purposes pursuant to the Act, and not to any other sales.

/s/Mark E. Nunnelly

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