



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 76

John C. Whitaker
Board Attorney
Kansas State Board of Pharmacy
Landon State Office Bldg., Room 513
900 S.W. Jackson
Topeka, Kansas 66612

RE: Taxation -- Kansas Retailers' Sales Tax -- Exempt
 Sales; Prescription Drugs

Synopsis: A prescription order for a medication which may be
 dispensed without such an order does not elevate
 the medication to the status of a prescription -
 only drug for purposes of the Kansas retailers'
 sales tax act. To be exempt from the tax imposed
 by that act, the drug must be one which is
 prohibited by law from being dispensed without a
 prescription. Cited herein: K.S.A. 1987 Supp.
 65-1626, 79-3606.

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Dear Mr. Whitaker:

As attorney for the Kansas State Board of Pharmacy, you have requested our opinion concerning exemptions from the Kansas retailers' sales tax. Specifically, you inquiry whether over-the-counter medications prescribed by physicians and dispensed as such pursuant to the physician's written order are exempt from sales tax. Your question arises out of situations whereby a physician writes a prescription order for a drug or medication which does not require a prescription order. The purpose of writing the order is to include


instructions for administration which do not correspond with the label directions.

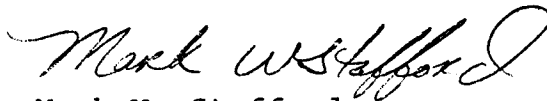
Exemptions from the tax imposed by the Kansas retailers' sales tax act appear in K.S.A. 1987 Supp. 79-3606. Relevant to your inquiry is subsection (q), which states that prescription-only drugs [as defined by K.S.A. 1987 Supp. 65-1626(x)] which are dispensed pursuant to a prescription order [as defined by K.S.A. 1987 Supp. 65-1626(y)] by a licensed practitioner, are exempt from the retailers' sales tax. A prescription-only drug is defined as one which is required to state on its label that federal law prohibits dispensing without a prescription. K.S.A. 1987 Supp. 65-1626(x).

In Board of Park Comm'rs, City of Wichita v. State, ex rel., 212 Kan. 716 (1973), the court noted that tax exemption statutes are "construed strictly in favor of imposing the tax and against allowing the exemption for one who does not clearly qualify." 212 Kan. at 717. We believe that the plain language of the statute controls. To achieve exemption status, the transactions in question must involve drugs which are required by law to be dispensed pursuant to a prescription order. Using the rules of construction, the presence of a prescription order when one is not required does not elevate the transaction to a sale which is exempt from the retailers' sales tax.

In conclusion, it is our opinion that a prescription order for a medication which may be dispensed without such an order does not elevate the medication to the status of a prescription-only drug for purposes of the Kansas retailers' sales tax act. To be exempt from the tax imposed by that act, the drug must be one which is prohibited by law from being dispensed without a prescription.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mark W. Stafford
Assistant Attorney General

RTS:JLM:MWS:bas