

## Rule 007 – Food and Drugs

St. John the Baptist Parish has an exemption from the 1% Council – Sewerage sales/use tax on the sales of food for preparation in the home, drugs, insulin, orthotic & prosthetic devices, and patient aids prescribed by physicians, dentists, or licensed chiropractors.

The particular ordinance exemption reads as follows:

Ordinance 85-76 Section 3.01 (30) To the sales of food and drugs as provided for in L.R.S. 33:2721.4.

The relevant section of L.R.S. 33:2721.4 reads as follows:

D. The additional tax authorized herein shall not apply to:

(1) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of **drugs** prescribed by a physician or dentist, orthotic and prosthetic devices, and wheelchairs prescribed by physicians for personal consumption or use.

(2) The sale or purchase of any ostomy, ileostomy or colostomy device or any other appliance, including catheters, or related item which is required as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste.

(3) Patient aids prescribed by a physician for home use.

(4) **Food** sold for preparation and consumption in the home, including by way of extension and not of limitation:

(a) Bakery products.

(b) Dairy products.

(c) Soft drinks.

(d) Fresh fruits and vegetables.

(e) Package foods requiring further preparation by the purchaser.

(f) Sales of meals furnished:

(1) To the staff and students of educational institutions, including kindergartens.

(2) The staff and patients of hospitals.

(3) The staff, inmates, and patients of mental institutions.

(4) Boarders of rooming houses; and

(5) Occasional meals furnished in connection with or by educational, religious, or medical organizations, if the meals are consumed on the premises where purchased; however, sales by any of the above institutions or organizations in facilities open to outsiders or to the general public are not exempt from the tax authorized by this Section. Food sales by restaurants, drive-ins, snack bars, candy and nut counters; private clubs, and sales made by an establishment not specifically exempted elsewhere, who furnish facilities for the consumption of food on the premises, are not exempt from the tax authorized by this Section.

### Drugs, Medical Items:

The exemption for medical items prescribed by a physician is subject to the following requirements (*Louisiana Tax Topics*, Louisiana Department of Revenue, Vol. 19, No. 2, April 1999). First, physicians must prescribe the medical items. Any qualifying medical devices given to, applied to, or administered to patients by a health care professional are considered to have been administered under physicians' orders. Second, the items must be used under the supervision of a physician or a designated health care professional such as a nurse, medical technician, or therapist. Third, the items must be used

personally by patients. To qualify, the device must be given to, applied to, inserted into, or administered to the patient either personally by the patient or for the patient by a health care professional. Fourth, the items must be used exclusively by individual patients and discarded after one patient's use. Fifth, the items must be designed to treat a medical disease. Treatment includes diagnostic procedures necessary to facilitate treatment, and procedures necessary to maintain sanitary and hygiene standards during treatment, but excludes routine procedures performed during a periodic health checkup. Thus, patient surgical drapes and surgical kits are exempt, but surgeons' rubber gloves and disposable gowns are not exempt.

Lotions, salves, balms, ointments, and other preparations that are purchased in bulk and administered to patients by health care facilities for diagnostic or treatment procedures are considered consumable supplies and are not exempt. Also, hand cleaner, soap, disinfectant, and other supplies used to maintain sanitary conditions do not qualify for the exemption.

Package kits and trays of medical device items are fully exempt if at least 50% of the value of the items contained in the kit meet the criteria for the medical device exemption and are fully taxable if less than 50% of the value of the items meets the exemption criteria.

The exemption for patient aids prescribed by a physician or licensed chiropractor for home use applies to sickroom supplies that are sold or furnished to a patient and intended for the patient's convenience. This exemption includes such items as humidifiers, oxygen equipment, mattress pads, hospital beds, suction machines and supplies, and peg feeding tubes. Property purchased by hospitals or other medical institutions, whether durable or disposable, does not qualify for this exemption.

#### **Food:**

Generally, food sold for preparation in the home is exempt from sales and use tax, whereas food sold by eating establishments is subject to sales tax except for certain institutional sales discussed below.

- *Home preparation* - Exemptions from the state sales and use tax are provided for food (including bakery products) sold for preparation and consumption in the home, dairy products, soft drinks, fresh fruits and vegetables, and packaged foods requiring further preparation. Exempt items listed by regulation that are in addition to those specified by statute include the following: meat, fish, flour, sugar, fruit juices, canned goods, oleo, salt, spices, coffee and its substitutes, tea, cocoa, candy, condiments, relishes, spreads, shortening, and flavoring. Alcoholic beverages, malt beverages, beer, distilled water, bottled and carbonated water, and ice and "dry ice" are not exempt.

The exemption applies to sales by department, variety, drug, and similar stores of food items in large quantities or pre-wrapped boxes or containers that are not prepared for immediate consumption on the premises where sold. In contrast, sales of food items such as boxes of popcorn, loose candy, and chewing gum that are available in small quantities and are not prepared for immediate consumption on the premises where sold are taxable.

- *Restaurant sales* - Food sales by eating establishments of all types are subject to the sales tax. Businesses specifically listed as being subject to tax are the following: restaurants, drive-ins, snack bars, candy and nut counters, private clubs, and establishments not otherwise exempt that furnish facilities for eating. "Facilities for consumption" include outdoor facilities, such as parking areas, as well as those indoors.

*Institutional exemptions* - Meals furnished at educational institutions to staff and student body are exempt from sales and use taxes, as are meals furnished at hospitals and mental institutions to staff and patients. Similarly, meals served to boarders at rooming houses and meals furnished on an occasional basis by educational, religious, or medical organizations are also exempt from the sales and use taxes. However, sales are not exempt when any of the facilities discussed above are open to outsiders or to the general public. When sales are made to outsiders or the public, sales tax is payable on the entire gross receipts, not just the receipts attributable to the non-qualifying sales.