

Legislative Analysis



SALES AND USE TAX EXEMPTIONS FOR OVER-THE-COUNTER DRUGS WITH PRESCRIPTION

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 4464 & 4465

Sponsor: Rep. Lisa Posthumus Lyons

Committee: Tax Policy

Revised on 4-22-15

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bills 4464 and 4465 alter the Sales and Use Tax Acts, respectively, to facilitate the implementation of a tax exemption for the sale of over-the-counter drugs for human use dispensed with a prescription.

House Bill 4464 changes the definition of an over-the-counter (OTC) drug in Section 4g of the General Sales Tax Act (MCL 205.54g); House Bill 4465 specifically exempts the sales of OTC drugs with a prescription from taxation under the Use Tax Act.

House Bill 4464 alters the existing language in Section 4g, and exempts from the sales tax both OTC drugs dispensed by prescription and drugs only available legally by prescription. The existing language defines what is a "prescription" and a "prescription drug," but does not define "over-the-counter" drugs. The language in HB 4464 strikes the definitions of "prescription" and "prescription drug," and then defines OTC drugs as "a drug that is labeled in accordance with the format and content requirements required for labeling over-the-counter drugs under 21 CFR 201.66." The requirements referred to are those laid out by the federal Food and Drug Administration.

The new language replaces the previous definition for "prescription drug," and refers instead to drugs for human use that "can only be legally dispensed by prescription" and exempting them from the sales tax. These drugs are exempt from taxation under the state constitution. The language of HB 4464 is consistent with the language of this section of the Sales Tax Act before it was amended by Public Act 211 of 2013.

House Bill 4465 alters Section 4d of the Use Tax Act (MCL 205.94d) to exempt the sales of over-the-counter drugs with a prescription from the use tax. OTC drugs are defined by the same FDA labeling standard as in HB 4464. Without this companion use tax exemption, the sales tax exemption for OTC drugs simply makes the sale subject to the use tax. This has been the case since Public Act 211 of 2013 took effect on March 14, 2014. By adding OTC drugs to the list of use tax exemptions, sales of these drugs to consumers will now be fully exempt from taxation.

FISCAL IMPACT:

As written, the bills would have no new fiscal impact because the bills are codifying current practice. Public Act 211 of 2013 (or House Bill 4831 from the previous legislative session)

provided the sales tax exemption for over-the-counter drugs dispensed with a prescription. However, without an accompanying use tax amendment (as now being provided by House Bill 4465), use tax would be owed on these products instead. Unlike the sales tax, which is collected by the retailer at the point of purchase, the use tax is owed by the purchaser, and is therefore unlikely to have been remitted.

Legislative/ Fiscal Analyst: Adam Desrosiers

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.