**Private Letter Ruling**

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| **Ruling Number:** | **P-2001-019** |

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| **Tax Type:** | **Kansas Compensating Tax** |
| **Brief Description:** | **Prescription drug samples.** |
| **Keywords:** |  |
| **Approval Date:** | **03/12/2001** |

**Body:**

Office of Policy & Research

March 12, 2001

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RE: Your e-mail

Dear XXXX:

Thank you for your recent e-mail. You ask if prescription drug samples are subject to consumers compensating use tax. As a general rule, the purchaser or manufacturer of advertising items that are given away is required to accrue sales or use tax on the cost of the advertising materials. This is because they are purchasing and using the items for advertising. While this rule applies to pens, coffee cups, calendars, non-prescription drugs, and other advertising items that pharmaceutical companies heap on doctors and pharmacists, it does not apply to prescription drugs. These drugs receive special treatment under the Kansas sales and use tax law.

Revenue Ruling 19-87-1 provides that*sales* of prescription drugs to practitioners are tax exempt:

**REVENUE RULING 19-87-1**

**Kansas Sales Tax - Sales of Prescription Drugs to a Person**
**Licensed to Practice the Healing Arts, Dentistry, and Optometry**

K.S.A. 79-3606(q) provides an exemption from the Kansas sales tax for the sale of prescription only drugs, as defined by K.S.A. 65-1626, dispensed pursuant to a prescription order, as defined by K.S.A. 65-1626, by a licensed practitioner.

The Department of Revenue has determined that sales of prescription only drugs to a person licensed to practice the healing arts, dentistry, or optometry for said person's inventory or for use in the performance of his or her professional services would fall within the exemption under K.S.A. 79-3606(q). Therefore, such sales would be exempt from Kansas state and local sales tax.

This Revenue Ruling supersedes all previous Department of Revenue Rulings, opinions, and decisions, and shall be effective on and after April 1, 1987.

Approved:
Harley T. Duncan
Secretary of Revenue

Because Revenue Ruling 19-87-1 provides that sales of prescription drugs to practitioners are exempt from sales and use tax, gifts of free samples of prescription drugs to practitioners are also tax exempt. K.S.A. 79-3704(d) states: "The provisions of this [compensating use tax]act shall not apply: . . . (d) In respect to the use, storage or consumption of any article of tangible personal property brought into or used within the state of Kansas if such article of tangible personal property would not have been subject to tax under the provisions of the retailers' sales tax act of this state if purchased within this state.” Since the Revenue Ruling effectively provides that the sale of prescription drugs to practitioners is exempt from sales and use tax, the gift of samples of prescription drugs is also exempt. This means that manufacturers are not required to accrue use tax when they give prescription drug samples to practitioners. This rule controls regardless of any advertising benefits that the pharmaceutical manufacturer receives.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts that you provided. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling. Please call me at (785) 296-3081 if you have any additional questions.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 03/21/2001 Date Modified: 10/10/2001**