



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

October 1, 2012

Mr. Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board, Inc.
4219 Hillsboro Pike, Suite 234
Nashville, TN 37215-6627

Dear Mr. Peterson:

This letter is in response to the 2012 preliminary report regarding North Dakota's compliance with the Streamlined Sales and Use Tax Agreement. The report contains one comment as follows:

"The statute does not define over-the-counter drugs or grooming and hygiene products. The agreement defines over-the-counter drugs to include grooming and hygiene products that meet the definition of over-the-counter drugs unless specifically excluded. The statute exempts drugs, which include over-the-counter drugs, with a prescription. The taxability matrix shows grooming and hygiene products as taxable with no comment regarding those that meet the definition of over-the-counter drugs with a prescription."

Under North Dakota law, sales of tangible personal property are subject to sales tax unless specifically exempted by the statute. Grooming and hygiene products are not exempted from sales tax and therefore, no definition of these products is required.

Subsection 7 of North Dakota Century Code § 57-39.2-04 exempts from sales tax "Gross receipts from the sale of drugs sold under a doctor's prescription." Under this section of the code, all drugs sold under a prescription are exempt from tax; therefore, no distinction is made, or is required to be made, for over-the-counter drugs or grooming and hygiene products.

I do not believe North Dakota is out of compliance with the Agreement; however, for the purpose of clarity, we have updated our taxability matrix with comments to note that all drugs sold under a prescription, including grooming and hygiene products that also meet the definition of a drug, are exempt from tax.

If you have additional questions, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "M S Vosberg".

Myles S. Vosberg
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Office of State Tax Commissioner
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Enclosures