

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

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Statutory Revision Committee (SRC)

Tuesday, June 27th, 2017

State Capitol, 9:00am, SCR 352

1. Review of 2017 session; discussion of SRC procedures/bill ideas
2. Presentation of memoranda describing potential SRC legislation
 - a. Nonsubstantive clean-up of § 39-26-717, C.R.S. (*Kate Meyer, Office of Legislative Legal Services*)
 - b. Repeal § 42-3-105 (1)(c)(1)(H), C.R.S. (*Jery Payne, Office of Legislative Legal Services*)
3. Discuss next meeting(s)

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MEMORANDUM A¹

TO: Statutory Revision Committee

FROM: Kate Meyer, Office of Legislative Legal Services

DATE: June 20, 2017

SUBJECT: Section 39-26-717, C.R.S. (state sales tax exemption for drugs and medical and therapeutic devices)

Summary

Section 39-26-717, C.R.S., creates a state sales tax exemption for drugs and medical and therapeutic devices. The law contains five separate and essentially identical definitions of the term "prescription". Additionally, three of the five instances of that definition appear outside the subsection dedicated to definitions, as does a definition for "licensed provider" that applies to the entire statute.

This potential legislation to rectify the repetitiveness and disorganization of section 39-26-717, C.R.S., is being recommended by staff of the Office of Legislative Legal Services, who became aware of the definitional redundancies in the course of drafting bills during the 2017 legislative session.

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Analysis

Section 39-26-717, C.R.S., exempts from state sales tax a number of drugs and medical and therapeutic devices. Certain exemptions apply only when the item is dispensed pursuant to a "prescription," a term whose definition recurs five times in section 39-26-717, C.R.S.² For all intents and purposes, the definitions are identical, varying only as regards the internal reference to the exempt item to which each applies. The repetition results in a statute that is difficult to read and longer than necessary, and suggests that there is some essential difference between the definitions when none, in fact, exists.

Additionally, the term "licensed provider" is defined in section 39-26-717, C.R.S. Despite the general applicability of this definition to the statute as a whole, this definition is needlessly located in a stand-alone subsection, subsection (3). To increase readability, this definition should be relocated to the general definitions subsection, subsection (2).

Statutory Charge³

The Statutory Revision Committee is explicitly tasked with recommending legislation to eliminate redundant rules of law; thus, a nonsubstantive reorganization of section 39-26-717, C.R.S., appears to fall squarely within that prong of the Committee's charge. Such reorganization will shorten the length of the statute while increasing the readability and comprehensibility of the same.

² Please refer to the Addendum to this memorandum, which reproduces § 39-26-717, C.R.S., in its entirety. The occurrences of the definition of "prescription" are highlighted.

³ The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

Proposed Follow-up/Draft Bill⁴

If the Statutory Revision Committee desires the Office of Legislative Legal Services to prepare a bill draft, the bill would:

- Condense, into a single definition under subsection (2) of section 39-26-717, C.R.S., the current “prescription” definition that exists in quintuplicate, while ensuring that such condensation maintains the applicability of the defined term to the items described in subsections (1)(g)(I), (1)(h)(I), (1)(i)(I), (2)(a)(III), and (2)(b)(III);
- Relocate the definition of “licensed provider”, which definition applies to the whole of section 39-26-717, C.R.S., to subsection (2) of that section (which relocation will necessitate relettering of the current paragraphs in that subsection); and
- Make any other nonsubstantive or technical amendments as may be warranted and approved. Such amendments may include updating internal citation references to conform to the current drafting format, striking superfluous language, and modernizing instances of the false imperative while maintaining the current meaning and applicability of the language being updated.⁵

The title of the bill would be limited in scope to a *nonsubstantive* revision of section 39-26-717, C.R.S. Further, staff would seek feedback from the Colorado Department of Revenue, and any other potential interested persons (as directed by the Committee), during bill drafting to ensure that no unintended consequences result from the proposed statutory update.

⁴ The Revisor of Statutes has determined that the bill being proposed would be inappropriate to include in the annual “Revisor’s Bill”.

⁵ Refer to the attached Addendum for specific examples of such ancillary updates.

ADDENDUM

39-26-717. Drugs and medical and therapeutic devices - definitions.

(1) The following shall be exempt from taxation under the provisions of part 1 of this article:

(a) All sales of prescription drugs dispensed in accordance with a prescription by a licensed provider or furnished by a licensed provider as part of professional services provided to a patient or client;

(b) All sales of insulin in all its forms dispensed pursuant to the direction of a licensed provider;

(c) All sales of glucose useable for treatment of insulin reactions;

(d) All sales of urine- and blood-testing kits and materials;

(e) All sales of insulin measuring and injecting devices, including hypodermic syringes and needles;

(f) All sales of prosthetic devices;

(g) (I) All sales of oxygen delivery equipment and disposable medical supplies related to oxygen delivery dispensed pursuant to a prescription.

(II) For purposes of this paragraph (g), "prescription" means any order in writing, dated and signed by a licensed physician, physician assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items described in subparagraph (I) of this paragraph (g) so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item described in subparagraph (I) of this paragraph (g) is ordered and directions, if any, to be included with such item.

(h) (I) All sales of medical, feeding, and disposable supplies, including any related accessories, for incontinence, infusion, enteral nutrition, ostomy, urology, diabetic care, and wound care dispensed pursuant to a prescription.

(II) For purposes of this paragraph (h), "prescription" means any order in writing, dated and signed by a licensed physician, physician assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items described in subparagraph (I) of this paragraph (h) so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item described in subparagraph (I) of this paragraph (h) is ordered and directions, if any, to be included with such item.

Comment [KM1]: Example of false imperative. Can be replaced with "are".

Comment [KM2]: Example of superfluous language; may be struck without changing meaning.

(i) (I) All sales of equipment and related accessories for sleep therapy, inhalation therapy, and electrotherapy dispensed pursuant to a prescription.

(II) For purposes of this paragraph (i), "prescription" means any order in writing, dated and signed by a licensed physician, physician assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items described in subparagraph (I) of this paragraph (i) so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item described in subparagraph (I) of this paragraph (i) is ordered and directions, if any, to be included with such item.

(j) All sales of durable medical equipment and mobility enhancing equipment;

(k) All sales of nonprescription drugs or materials when furnished by a licensed provider as part of professional services provided to a patient; and

(l) All sales of corrective eyeglasses, contact lenses, or hearing aids.

(2) As used in this section, unless the context otherwise requires:

(a) (I) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription, that:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Is generally not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(II) "Durable medical equipment" includes, but is not limited to, hospital beds, intravenous poles and pumps, trapeze bars, toileting aids, bath and shower aids, standing aids, adaptive car seats, communication devices, and any related accessories for such items.

(III) For purposes of this paragraph (a), "prescription" means any order in writing, dated and signed by a licensed physician, physician assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items of durable medical equipment so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item of durable medical equipment is ordered and directions, if any, to be included with the equipment.

(b) (I) "Mobility enhancing equipment" means equipment, including repair and replacement parts for such equipment, dispensed pursuant to a prescription, that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another;

(B) Is appropriate for use in a home, in a person's community, or in a motor vehicle;

(C) Is not generally used by persons with normal mobility; and

(D) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(II) "Mobility enhancing equipment" includes, but is not limited to, wheelchairs and wheelchair components or accessories, walking aids such as crutches, canes, or walkers, grab bars, trapeze bars, lift chairs, patient lifts, motorized carts, scooters, controls that are installed on motor vehicles, and any related accessories for such items.

(III) For purposes of this paragraph (b), "prescription" means any order in writing, dated and signed by a licensed physician, physician assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items of mobility enhancing equipment so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item of mobility enhancing equipment is ordered and directions, if any, to be included with the equipment.

(3) For purposes of this section, "licensed provider" means any person authorized to prescribe drugs under the provisions of title 12, C.R.S.

Comment [KM3]: Should be relocated to fall under subsection (2), the general definitions provisions of section 39-26-717, C.R.S.

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MEMORANDUM B¹

TO: Statutory Revision Committee

FROM: Jery Payne, Office of Legislative Legal Services

DATE: June 20, 2017

SUBJECT: Redundancy of Odometer Verification with Federal Titling Requirements for Motor Vehicles

Summary

This matter came to the attention of the Office of Legislative Legal Services from Sheila Reiner, the Mesa County Clerk and Recorder.

Sections 42-3-105 (1)(c)(I)(H) and 42-6-107 (1)(b)(I), C.R.S., require an odometer reading during a vehicle identification number (VIN) verification. These requirements duplicate a separate odometer disclosure required by federal law to be made on the certificate of title.

Analysis

Colorado law requires that, when a VIN is physically verified, an odometer reading must be included:

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42-3-105. Application for registration - tax. (1) (c) (I) Except as provided in subsection (1)(c)(I.5) of this section, the department may require those vehicle-related entities specified by rule to verify information concerning any vehicle through the physical inspection of the vehicle. The information required to be verified by a physical inspection must include:

(H) *The odometer reading of such vehicle; and*

(I) *Such other information as required by the department.*²

(emphases added)

42-6-107. Certificates of title - contents - rules. (1) (b) (I) Except as otherwise provided in subsection (1)(b)(II) of this section, the department may require those vehicle-related entities specified by regulation to verify information concerning a vehicle through the physical inspection of the vehicle. The information required to be verified by a physical inspection must include the vehicle identification number or numbers, the make of vehicle, the vehicle model, the type of vehicle, the year of manufacture of the vehicle, the type of fuel used by the vehicle, *the odometer reading of the vehicle, and other information as may be required by the department. ...*³ *(emphasis added)*

These sections authorize the Department of Revenue to require that, upon the transfer of a motor vehicle, the VIN be verified. But once the department determines that the VIN needs to be verified, the statutes mandate that the department capture the odometer reading.

Federal law also requires that the odometer reading be placed on a certificate of title when the vehicle is transferred:

§ 580.5 Disclosure of odometer information. (c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or, except as noted below, on the document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the title, and not on a reassignment document. ...⁴

Therefore, Colorado law creates a separate and redundant process for recording a vehicle's mileage when it is transferred.

² § 42-3-105, C.R.S.

³ § 42-6-107, C.R.S.

⁴ 49 CFR 580.5 (c)

Both these Colorado statutes give the department the ability to still require any other information that it deems appropriate. If a situation arises where the department considers checking the odometer to be important, it can promulgate a rule and amend the appropriate forms.

Statutory Charge⁵

Colorado law creates a separate process for capturing the odometer reading from the process required by federal law. Therefore, a duplication of efforts is required to record the same information.

Proposed Bill⁶

If the Statutory Revision Committee desires the Office of Legislative Legal Services to prepare a bill draft, the bill would simply repeal the requirements that a VIN verification include an odometer reading as follows:

42-3-105. Application for registration - tax. (1) (c) (I) Except as provided in subsection (1)(c)(I.5) of this section, the department may require those vehicle-related entities specified by rule to verify information concerning any vehicle through the physical inspection of the vehicle. The information required to be verified by a physical inspection must include:

(H) ~~The odometer reading of such vehicle; and~~

42-6-107. Certificates of title - contents - rules. (1) (b) Except as otherwise provided in subsection (1)(b)(II) of this section, the department may require those vehicle-related entities specified by regulation to verify information concerning a vehicle through the physical inspection of the vehicle. The information required to be verified by a physical inspection must include the vehicle identification number or numbers, the make of vehicle, the vehicle model, the type of vehicle, the year of manufacture of the vehicle, the type of fuel used by

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⁶ The Revisor of Statutes has determined that the bill being proposed would be inappropriate to include in the annual "Revisor's Bill".

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