

Department of Taxation

Regulation Title: MEDICINES AND DRUGS, EYEGLASSES AND RELATED ITEMS
VAC Number: 23 VAC 10-210-940

- 1. Statement identifying and describing the source of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions;**

Section 58.1-203 of the Code of Virginia authorizes the Commissioner of the Department of Taxation to promulgate regulations related to the interpretation and enforcement of the laws of the Commonwealth governing taxes administered by the department. In addition, 58.1-609.7(15b) of the Code provides that the terms Anonprescription drugs and Aproprietary medicines shall be defined pursuant to regulations promulgated by the department.

- 2. Statement delineating the potential issues to be addressed in the proposed regulation;**

The amendments to the regulation will clarify the application of the retail sales and use tax to purchases and sales of prescription drugs, nonprescription drugs and proprietary medicines and controlled drugs. In addition, it explains the tax status of eyeglasses and other ophthalmic aids, supplies generally, durable medical equipment, prosthetic devices, and, equipment and supplies used in hemodialysis and peritoneal dialysis. This regulation provides the necessary guidance to those establishments impacted by the regulation.

- 3. Statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulations are intended to solve; and,**

The regulation is essential to provide clear guidance to consumers, health care providers, medical equipment and supply dealers, pharmacies, and others engaged in the sale of health related products, the tax status of medicines and drugs, both prescription and nonprescription, medical equipment and supplies, aids, and prosthetic devices. In addition, the regulation is essential to serve as a vehicle in court for upholding the department's policy in the event of litigation.

4. **Statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered, and the reasoning by which the agency has rejected any of the alternatives considered.**

Alternatives which might achieve the essential purpose of a regulation were considered. However, in light of the complexity of the issues at hand and the threat of litigation over some issues, the department has determined that this regulation is critical.