

**OPINION
56-211**

September 14, 1956 (OPINION)

TAXATION

RE: Sales Tax - Physician Prescribed Drugs

This is in reply to your letter of September thirteenth, asking for my opinion on the question as to whether certain retail sales of insulin are exempt from the retail sales tax under subdivision 7 of section 3, Chapter 329, Session Laws 1955, which exempts from the retail sales tax "gross receipts from the sale, by any drugstore, of drugs sold under a doctor's prescription."

You state that "while it is clear that insulin purchased under a prescription is exempt from retail sales tax, the problem arises in connection with refills which can be purchased 'over the counter' without the necessity for the purchaser to show a doctor's prescription." You further state that "several druggists have advised us that insulin is a unique drug in that there seems to be no other drug having the same characteristics, among which are the following:

- "1. No person ever begins using it except upon a doctor's advice.
2. Once a person becomes a user he always continues to be a user.
3. Insulin varies both as to potency, that is, the units of insulin in each cubic centimeter; and as to type, that is, as to source from which the insulin is derived.
4. The potency and type of insulin prescribed for a user depends upon the diagnosis made by his doctor."

When the Legislature provided this exemption for drugs from the retail sales tax, I believe that one of its purposes in doing so was to grant relief in what might be termed malady cases where the cost of drugs to the patient might become burdensome. Since insulin is a unique drug in that the potency and type required by a user must be prescribed by a doctor, it is my opinion that all purchases of insulin for users of the drug should be considered purchases under a doctor's prescription and therefor exempt from the retail sales tax.

LESLIE R. BURGUM

Attorney General