

Legislative Analysis



USE TAX EXEMPTION: OTC DRUGS BY PRESCRIPTION

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House Bill 5342

Sponsor: Rep. Lisa Posthumus Lyons

Committee: Tax Policy

Complete to 2-20-14

A SUMMARY OF HOUSE BILL 5342 AS INTRODUCED 2-19-14

House Bill 5342 would amend the Use Tax Act to provide an exemption for over-the-counter drugs for human use when obtained under a prescription. This is a companion bill to Public Act 211 of 2013 (House Bill 4831), which amended the General Sales Tax Act to provide the same exemption.

Because of the interaction between the sales tax and the use tax, generally speaking, if an item is exempt only from the sales tax, it then becomes subject to the use tax, and the aim of providing tax relief is frustrated.

Prior to PA 211, the sales tax act exempted sales of "drugs for human use that can only be legally dispensed by prescription." That was how the act implemented Article IX, Section 8 of the State Constitution, which says, "No sales tax or use tax shall be charged or collected from and after January 1, 1975 on the sale or use of prescription drugs for human use." PA 211 extended the exemption to include over-the-counter drugs when prescribed by a physician. House Bill 5342 would make the same changes to the Use Tax Act.

FISCAL IMPACT:

As noted above, because of the interaction between the sales tax and the use tax, any sales tax not collected as a result of Public Act 211 would be converted to a use tax liability. As such, by extending the sales tax exemption provided earlier by PA 211 (House Bill 4831) to the use tax, House Bill 5342 does not impose any additional fiscal impact above that already associated with the already enacted sales tax exemption.

For HB 4831, the HFA estimated the bill could reduce sales tax revenue by \$8.2 million on a full year basis. Under this estimate, the loss to the School Aid Fund would be approximately \$6 million, the loss to constitutional revenue sharing would be approximately \$820,000, and the loss to the General Fund would be approximately \$1.37 million. The actual amount of these losses will depend on the rate at which doctors prescribe OTC drugs, and the prices of those medications, both of which are unknown.

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