

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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September 26, 2001

Re: Our File Number LR-01-149; Taxability of medical devices and products

Dear

We submit the following in reply to your request for advice regarding the taxability of the Blood Flow Equipment and Covers that were listed in your correspondence.

Please be advised that medical products themselves are not exempt based on their use or status as prescription or non-prescription health care products.

A health care provider may purchase legend drugs, oxygen, insulin and ocular implants exempt from sales and use tax. Other medical products, supplies and devices sold to health care providers for use in providing medical or patient care would be subject to tax. While there is an exemption for medical supplies sold or leased on behalf of patients who are reimbursed by Medicaid and Medicare, this exemption does not extend to purchases made by health care facilities, but only to a vendor's direct sales to a patient who is a Medicaid or Medicare recipient. Please note there are facilities, which are exempt on their purchases of tangible personal property and taxable services because of their status as federal institutions or as political subdivisions of the State of Oklahoma. See Sections 1356 and 1357.6 of Title 68, Oklahoma Statutes and Oklahoma Tax Commission Rules 710:65-13-130, 710:65-13-169, 710:65-13-170 and 710:65-19-142. Also, note Commission Rule 710:65-13-170(d) which contains a list of exempt medical equipment for Medicaid or Medicare recipients.

Other entities not listed in the above discussions would be subject to tax on their purchases if they do not have a resale certificate. However, in order for a vendor to be relieved of liability to collect sales tax proper documentation to substantiate the exempt status of the organization must be retained in the vendor's records. Please note that Tax Commission Rule 710:65-7-6, a copy of which is enclosed, "**Vendor's relief from liability and duty to collect sales tax**", describes in detail the requirement needed to establish "**properly completed documentation certified by the Tax Commission**".

In the transaction described in your letter, where the covers for the blood flow equipment are contracted for purchase by the hospital, sale tax would be due on the covers at

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the time of purchase. When a manufacturer makes a withdrawal from its inventory of items that it uses in a taxable manner, such as placing the blood flow equipment in a hospital for use in conjunction with the purchase of the covers, it is required to accrue sales tax on the sales value of the item withdrawn. The same would also apply to transaction number two regarding samples that are given to potential customers. Therefore, sales tax is due on the sales value of the Blood Flow Equipment. Sales value is defined in Oklahoma Tax Commission Rule 710:65-1-2 as:

"Sales value" means:

- (A) In the case of a manufacturer, the sum of the manufacturer's cost of raw materials and the proportionate share of both the cost of machinery and equipment used and the cost of items consumed in the direct process of the manufacturing of the product, all of which were purchased exempt from sales tax for use in the process of manufacturing; or
- (B) In the case of a person holding a mixed beverage tax permit or other permit issued in accordance with 37 O.S. Section 577, the total retail sales price for sales of alcoholic beverages only, calculated pursuant to *OAC 710:20-5-4*; or
- (C) In the case of sales of prepared food, the sales value of a free, reduced price, or complimentary meal is presumed to be the greater of the consideration received for the meal, if any, or the cost paid by the vendor of the food for the food items included in the free, reduced price, or complimentary meal; or
- (D) In the case where an inventory of goods, originally purchased exempt for resale, is being held for rental or leasing purposes, the regular rental charges which would be charged to the vendor's best customer, if the goods are to be returned to inventory. Where the goods are not to be returned to inventory held for rental or leasing purposes, the lesser of the original purchase price of the goods, or the current market price will be presumed to be the sales value; or
- (E) Otherwise, "**sales value**" means the larger of either the vendor's cost at the time the exempt purchase of goods was made, or the price at which it would be sold to the vendor's best customer in the ordinary course of business.

Copies of the statutory references and rules are enclosed.

This response applies only to the circumstances set out in your request of September 19, 2001. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law. If I can be of further assistance, please feel free to contact me.

Sincerely,

Brenda J. Sullivan
Tax Policy Analyst

Enclosure