

December 31, 2001

Our file Number LR-01-197; Sales tax on the sale of an implanted medical device.

Dear

This is in response to your inquiry concerning sales tax on an item of medical equipment. Your fact statement and questions have been copied into this email and they are followed by our responses:

"We have a device that is implanted in the body by a doctor for the relief of chronic back pain. The device is intended to remain in the body permanently. We would sell these devices to hospitals and surgery centers, and typically the patient's insurance company would be billed by the medical facility as a package price for the entire procedure. At this point the patient has both title and possession of the device, and if for some reason the device is removed, it cannot be reused. The device has no use other than to be implanted, and usually, the medical facility will not maintain an inventory of these devices, and purchase a device for a specific patient. We use our best efforts to record which serial numbers are used on a specific patient in order to provide the manufacturer of the product with this information.

In your opinion does this device qualify as a prosthetic device, and if so, may we treat our sales to the medical facilities as sales to individuals? If the device does qualify as a prosthetic device, but we cannot treat sales to medical facilities as sales to individuals, what documentation would the medical facility have to provide to us in order to make tax exempt purchases of this device?"

The device does not qualify as the type of prosthetic device that is exempted by the Oklahoma Sales Tax Code in that it does not replace a missing part of the human body. Please refer to Oklahoma Tax Commission Rule 710:65-13-171. However, if the item is purchased on behalf of an individual, by a hospital or surgical center, and the individual to which it is furnished is a medicare or medicaid recipient, the hospital or surgical center may purchase the device exempt from sales tax. They should provide you with the information set out in sub-section (b) of Oklahoma Tax Commission Rule 710:65-13-173. If the hospital or surgical center is not able

to supply that information at the time of their purchase, they should pay the sales or use tax on the item when it is purchased and request a direct refund of the tax when it is implanted into a medicare or medicaid patient.

Copies of the rules noted above and of rule 710:65-13-169 that defines terms used in the rules, and of rule 710:65-13-170 which deals with the general taxability of hospitals will be sent to you.

This response applies only to the circumstances set out in your request of December 7, 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,
OKLAHOMA TAX COMMISSION

Michael G. Pillow
Tax Policy Analyst

Mike Pillow
Tax Policy Analyst
Tax Policy Division
Oklahoma Tax Commission
(405) 521-3133