

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
TONY MASTIN, DIRECTOR

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March 11, 2002

Re: Our File Number LR-02-013; Taxability of medical devices and products

Dear

We submit the following in reply to your request as to whether Oklahoma imposes sales/use tax on prescription or "legend" drugs as it pertains to the transactions 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. The Commission promulgated Rule 710:65-13-170 to implement the sales tax exemption for medicines or drugs prescribed for the treatment of human beings which provides in part as follows:

Legend drugs prescribed for the treatment of human beings by a person licensed to prescribe the medicine or drugs are exempt, regardless of who purchases the medicine or drug. Proprietary drugs and medicines are subject to tax.

The Commission has determined that only items which bear the label: "Caution: Federal law prohibits dispensing without a prescription", will be exempt from the levy of sales tax.

If chemotherapy drugs, antibiotics and oral antibiotics would qualify under the guidelines described above, then they can be purchased exempt from tax.

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Additionally, 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, 1357.6 and 1357(7) of Title 68, Oklahoma Statutes and Oklahoma Tax Commission Rules 710:65-1-7, 710:65-7-6, 710:65-13-130, 710:65-13-169, 710:65-13-170, 710:65-19-142 and 710:65-19-258.

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**".

Copies of the statutory references and rules are enclosed. If I can be further assistance, please write or contact me at (405) 521-3133.

This response applies only to the circumstances set out in your request of January 21, 2002. 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