

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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November 18, 2003

Re: Our File Number LR-03-163; Sales tax on sales of orthopedic and orthotic devices

Dear

This is in response to your inquiry concerning the sales taxability of the sale of orthopedic and orthotic devices. You state that your client makes sales following three different scenarios. I have set out your scenarios below and each is followed by our comments.

## Scenario 1

Commercial sales to hospitals on a per person basis where doctor's orders are provided and the hospital bills the insurance company, Medicare/Medicaid or the patient.

**Response:** The hospital has no ability to buy the orthopedic or orthotic device exempt from sales tax. If the hospital purchases and pays sales tax on a device for which an exemption is later available because the device is provided to a patient who is covered by Medicare or Medicaid, the hospital should request a refund directly from the Oklahoma Tax Commission.

## Scenario 2

Non-commercial sales either at a doctor's office or a patient's home after receiving insurance and prescription information from the doctor.

**Response:** If the sale is to a patient, and the device is a prosthetic device, as defined in the Sales Tax Code, the sale is exempt from sales tax. If the sale is not a prosthetic device, but the item sold is classified as durable medical equipment or as a medical device, and the sale is made to a patient where the cost of the equipment or device is reimbursable under the Medicare or Medicaid program, the sale is exempt from sales tax. If the sale is of a prosthetic device to a doctor, the sale is taxable unless the sale is for a patient is covered by Medicare or Medicaid. If the sale is to a doctor, of a device that is not a prosthetic, for a patient that is not covered by Medicare or Medicaid, the sale is taxable. If the doctor purchases for and furnishes the medical

device to a patient where the cost of the item is reimbursable by Medicaid or Medicaid, the sale is not subject to sales tax.

**Scenario 3**

Non-commercial sales to a patient whereby the patient comes into the taxpayer's office after the insurance and prescription information has been received from the doctor.

**Response:** If the sale is to a patient, and the device is a prosthetic device, as defined in the Sales Tax Code, the sale is exempt from sales tax. If the sale is not a prosthetic device, but the item sold is classified as durable medical equipment or as a medical device, and the sale is made to a patient where the cost of the equipment or device is reimbursable under the Medicare or Medicaid program, the sale is exempt from sales tax. For all other sales, the sale of the orthopedic and orthotic devices would be taxable.

These responses are based on Oklahoma Tax Commission Rules 710:65-13-169; 710:65-13-170; 710:65-13-173 and on 68 O.S. Sections 1357 and 1357.6. Copies of the rules are enclosed.

This response applies only to the circumstances set out in your request of August 18, 2003. 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