

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

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January 4, 2004

Re: Our File Number LR-04-249; Sales tax on sales of durable medical equipment which are reimbursed at least partially by Medicaid or Medicare.

This is in response to your request for confirmation concerning your understanding of the subject referenced above. I have set out below, the paragraphs in your letter giving your fact situation, your examples, and your understanding of Oklahoma Tax Commission Rule 710:65-13-173. Our response follows those paragraphs.

Your Fact Situation:

My query concerned Rule 710:65-13-173 as it pertains to the assessment of sales tax on Durable Medical Equipment (DME). When I opened in late spring, I was told *to collect sales tax on non-Medicare/Medicaid (M/M) sales and on 'those portions' of sales not covered by M/M on DME.* My understanding (and apparently that of a number of OTC employees that I spoke with) was that:

1. That portion of the sale not covered by M/M was subject to taxation and,
2. Sales where Medicaid and Medicare were secondary payers (primary payer being a private or other governmental insurance organization) were similarly subject and,
3. Sales to individuals eligible for M/M but choosing not to use it and purchase an item outright

Your Examples:

Item 1, above: example - a patient is prescribed a lift chair. Lift chairs typically run in the \$600 - \$900 price range and the Medicare reimbursement rate for Oklahoma is \$330.71 (this amount pays for the lift device built into the chair only; not the chair proper). I have been assessing sales tax on that portion greater than the \$330.71 where Medicare was the primary payer source

Item 2, above: example - a patient is eligible for Blue Cross or similar commercial primary (top 80 or 90%) coverage with the secondary payment (10 to 20%) coming from Medicare or Medicaid. In this example, we were assessing sales tax on the first 80 or 90% and not on the secondary source of M/M.

Item 3, above: example – M/M will pay for 'one and only one' cane, or walker, or wheelchair every 5 years. A recipient taking a \$20.00 cane then (without a subsequent hardship ruling) would be ineligible for a walker or wheelchair for 5 years. Knowing that, many recipients "reserve" their right to a future walker or wheelchair by purchasing the cane outright. In other words, they use their own funds now in exchange for M/M funds later. We have been assessing sales tax in these situations

Our Response:

If Medicare or Medicaid reimburses any part of a bill for the sale of an article of durable medical equipment, no sales tax is to be charged on any portion of the charge for that article. Therefore, in the first two examples, which are labeled "Item 1" and Item 2" that you include in your letter, no Oklahoma state or local sales tax should be charged. For the example labeled "Item 3" since Medicare or Medicaid does not reimburse any portion of the charge, no exemption is applicable and state and any applicable local sales taxes should be charged. This response is based on Oklahoma Tax Commission Rule 710:65-13-173.

This response applies only to the circumstances set out in your request of December 13, 2004. 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

cc: