

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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March 30, 2005

Re: Our File Number LR-05-045; Taxability of medical devices and products

We submit the following in reply to your request for a determination of the sales taxability of your company's automatic external defibrillators (AED's) and accessories which are used in sudden cardiac arrest emergencies to correct abnormalities in the heart's electrical system.

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

As to "durable medical equipment", Section 1357.6 of Title 68 exempts "sales of "durable medical equipment" when purchased or leased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner who is authorized by law to prescribe such item and when the cost of such item will be reimbursed under the Medicare or Medicaid Program.

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 purchased 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. Additionally, the sale of any prosthetic device to an individual, other than a Medicare or Medicaid recipient, for use by that individual, is not subject to sales tax. 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 710:65-1-7, 710:65-7-6, 710:65-13-130, 710:65-13-169, 710:65-13-170, 710:65-13-171 and 710:65-19-142. Also, note Commission Rule 710:65-13-173(d) which contains a list of exempt medical equipment for Medicaid or Medicare recipients.

Therefore, automatic external defibrillators (AED's) and accessories are taxable if not purchased by or on behalf of a Medicare or Medicaid recipient or by an exempt entity as listed in the above.

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.

Sincerely,



Brenda J. Sullivan
Tax Policy Analyst

Enclosure