OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

September 20, 2006

Re: Our File Number LR-06-141; Taxability of medical devices and products

Dear

We submit the following in reply to your request for a letter ruling on the sales taxability of your product "STORM (Staffordshire Orthopaedic Reduction Machine).

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. 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 as part of their services provided, 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. Hence, if a physician determines that a patient needs a prosthetic device and purchases the prosthetic device specifically designed for that patient, the purchase is made on behalf of the individual and will not be subject to the 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.

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".**

Therefore, your product **"STORM"** is not exempt when sold to a medical service provider or other entities, unless that medical service provider or entity is, itself, exempted in the statutes.

You may reference the above rules on our website at http://www.oktax.state.ok/oktax/ruleindex.html. The statutory references are enclosed for your information. If I can be further assistance, please write or contact me at (405) 521-3133.

Sincerely,

Brenda J. Sullivan

Brenda J. Sullivan
Tax Policy Analyst

Enclosure