OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
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October 23, 2006

Re: Our File Number LR-06-174; Sales Taxability of Medical Birth Control Device

Dear

This is in response to your inquiry concerning the subject referenced above. I have copied your description of the device and your question below, and they are followed by our response:

Your Description:

The permanent birth control system consists of a micro-insert, a disposable delivery system, and a disposable split introducer. The micro-insert consists of a stainless steel inner coil, a nitinol, superelastic outer coil, and polyethelene terephthalate (PET) fibers. The disposable delivery system consists of a single-handed ergonomic handle which contains a delivery wire, release catheter, and delivery catheter.

Your Question:

Given that my client has nexus with your state and that my client's customers are located in your state, are the sales of the permanent birth control device described above subject to sales or use tax in your state?

Our Response:

It is understood that the device must be sold by, or on the order of a physician, and that it can be used only by physicians who are knowledgeable in its implantation. While it is a "medical device" that is sold to physicians or health care facilities, it is taxable when it is purchased by them. There is no exemption for the sale of a "permanent birth control system" in the Oklahoma Sales Tax Code. Although there is an exemption for certain sales of medical devices to Medicare and Medicaid recipients, in order to be exempt, sales of medical devices must be made directly to the recipients and the device must be dispensed by a physician and the cost must be reimbursed by Medicare or Medicaid.

It has been the position of the Oklahoma Tax Commission that if a physician or a health care facility at the direction of a physician, dispenses a medical device on which it has previously paid sales tax, to a Medicare or Medicaid patient, and if the cost of the device is reimbursed by Medicaid or Medicare, the physician or health care facility may be able to claim a credit for the sales tax that was paid on the device. The claim form on which to claim the refund of sales tax is form BT 13-9 which is on our website:

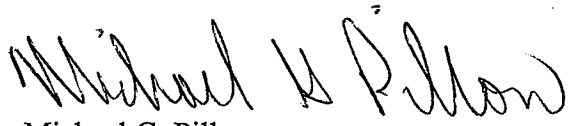
www.tax.ok.gov

This response is based on Oklahoma Tax Commission Rules 710:65-13-169; 710:65-13-170; and 710:65-13-173.

This response applies only to the circumstances set out in your request of October 9, 2006. 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



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