OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
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April 3, 2007

Our File Number LR-06-221; Exempt status of medical device purchases based on Oklahoma Tax Rules 710:65-13-171 and 710:65-13-173

Dear :

This is in response to your requests for a letter ruling based on Oklahoma Tax Commission Rules 710:65-13-171 and 710:65-13-173 to determine your company's tax status on the purchase of prosthetic devices that are implanted in individual patients and also patients who are Medicare/Medicaid program recipients.

In order to determine whether the meets all the requirements under Commission Rule 710:65-13-173, please provide copies of the documentation that would satisfy the requirement for subsection (a) (3) which states that "The item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid." This is where a practitioner determines that the patient needs qualifying medical equipment, devices or supplies outside of the provision of the patient's daily care, and the "Clinic" requests and receives from Medicare/Medicaid reimbursement approval of the purchase, those items can be purchased exempt from sales or use tax pursuant to 68 O. S. § 1357.6.

Therefore, if you obtain such Medicare/Medicaid reimbursement approval it would be determined that the subsequent purchase was made on behalf of a Medicare/Medicaid program recipient and the purchase would not be subject to sales 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, see subsection (b) and (c) of Commission Rule 710:65-13-173. The sale of medical equipment or devices, i.e. prosthetics to a health care provider in Oklahoma is subject to sales tax, see Commission Rule 10:65-13-170 and 710:65-19-142. However, if your clinic uses a prosthetic on

which they have paid sales tax for a patient that is covered by Medicaid or Medicare, you may receive a refund of the sales tax paid on the prosthetic directly from the Tax Commission. See Commission Rule 710:65-13-170 (d). Requests for refunds should be addressed to Jerry Statton, Account Maintenance Division, 2501 Lincoln Blvd., Oklahoma City, Ok 73194, (405) 521-3270. See Commission Rule 710:65-11-1 which deals generally with refunds.

In another request, also requested a determination of its status pursuant to Oklahoma Tax Commission Rule 710:65-13-171 exempts sales of prosthetic devices when the devices are sold to individuals; it does not exempt such sales when the devices are sold to medical facilities. Instead, as stated above, Oklahoma Tax Commission Rules 710:65-19-142 and 710:65-13-170 makes sales of prosthetic devices to hospitals, infirmaries, nursing homes and like institutions subject to sales tax.

This response applies only to the circumstances set out in your requests of November 29, 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,

Brenda J. Sullivan
Tax Policy Analyst