OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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

November 27, 2007

RE: LR-07-073
Sales and Use Tax inquiry for electronic communication devices for people with speech or learning disabilities.

Dear

You had asked for an opinion to determine if your products were exempt from sales tax since they replace a bodily function and if our opinion would be different if the cost of the device was paid for directly by Federal Medicare or State Medicaid assistance.

Our response:

The definition of a **prosthetic device** means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:
(A) Artificially replace a missing portion of the body;
(B) Prevent or correct physical deformity or malfunction; or,
(C) Support a weak or deformed portion of the body.
(2) **"Prosthetic device"** does **not** include corrective eye glasses, contact lenses, or hearing aids (pursuant to **710:65-13-171.)**

None of the three products you submitted for consideration are "prosthetic devices" and therefore are subject to sales tax if sold directly to an individual.

However, all three of your products are considered:
"Medical equipment" Which means; machinery, apparatus and other devices intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases or the correction or alleviation of physical incapacity in human beings. (pursuant to 710:65-13-169)

710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to medicare/medicaid program recipients

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:
(1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169.

(2) The item is administered or distributed by a "practitioner" or purchased or leased, by or on behalf of an individual, pursuant to a prescription or work order of a practitioner; and (3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:
(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;
(2) A copy of the prescription or work order; and
(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:
(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;
(2) A copy of the prescription or work order;
(3) A copy of the eligible recipient's Medicare card; and
(4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Examples of durable medical equipment.** A nonexclusive list of **durable medical Patient care equipment, physical and occupational therapy**.
(A) Alternating pressure pads
(B) Bed rails
(C) Bedside commodes
(D) Bone fracture therapy devices
(E) Catheter devices and supplies
(F) Colostomy supplies and devices
(G) Communication aids for physically impaired
(H) Crawlers
(I) Crutches, crutch pads, tips
(J) Decubitus seating pads, bed pads
(K) Dressing aids, button loops, zipper aids, etc.
(L) Eating and drinking aids
(M) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers)
(N) Fitted stroller
(O) Foam seating pads
(P) Foam wedges
(Q) Geriatric chairs
(R) Grooming aids, dental aids
(S) Hand exercise equipment putty
(T) Hospital beds
(U) Household aids for the impaired

(V) Hydro-collators
(W) Hydro-therm heating pads
(X) I.V. stands
(Y) Leg weights (rehab. related)
(Z) Lift recliners
(AA) Muscle stimulators
(BB) Overbed tables
(CC) Paraffin baths
(DD) Patient transport devices, boards
(EE) Patient lifts
(FF) Patient lifts slings
(GG) Posture back supports
(HH) Posture back supports for seating
(II) Raised toilet seats
(JJ) Reaching aids
(KK) Restraints
(LL) Shampoo trays
(MM) Shower grip bars
(NN) Shower seating
(OO) Sitting and sleeping cushions
(PP) Specially designed hand utensils
(QQ) Specialized seating, desks, work stations
(RR) Splints, holders
(SS) Stairglides, lifts in home
(TT) Standing frames, devices and accessories
(UU) Stethoscope
(VV) Toilet safety frames
(WW) Traction stands, pulleys, etc.
(XX) Transcutaneous nerve stimulators
(YY) Trapeze bars-bar stand
(ZZ) Walkers
(AAA) Walker accessories
(BBB) Walking canes, quad canes, accessories
(CCC) Wheel walkers
(DDD) Wheelchairs
(EEE) Writing and speech aids for the impaired

This response applies only to the circumstances discussed in your written request of March 22, 2007. 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 there has been no change in applicable law.

Sincerely,

Oklahoma Tax Commission

Marc Morrison

Marc Morrison
Tax Policy & Research Division