

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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February 25, 2008

RE: Our File LR-07-148

Dear

I apologize for any inconvenience my delay in responding may have caused you. This is in response to your request regarding the application of sales and use tax to sales of electronic communication devices used by persons with speech or learning disabilities. I have scanned your facts into this letter, followed by our response.

“The products in question are divided into three categories:

- Touch screen portable device that allow users to select the words or phrases to say from a series of icons on the screen, which are then played audibly from the device.
- Keyboard devices, which allow users with some literacy skills and motor function to generate electronic speech by typing words that are then played audibly from the device.
- Small portable handheld devices that play-prerecorded phrases from a brief list displayed on the device.

The above listed products make it possible for individuals *challenged by significant speech, language, learning and physical disabilities* to communicate. Generally, these products are not sold pursuant to a doctor's prescription when payment is received directly from the customer. However, when payment is received through funding from Medicaid, Medicare or an insurance company, a doctor's prescription is required as part of the pre-sale authorization process.

These products replace the bodily function of speech for a person, therefore could qualify for exemption from sales and use tax. We request your opinion as to the application of tax in your jurisdiction to each of the products listed above. Also, would your opinion be different if the cost of the device was paid for directly by Federal Medicare or State Medicaid assistance.”

Our Response: Section 1357 (20) of Title 68 O.S. exempts "sales of prosthetic devices to an individual for use by such individual." " Prosthetic device" is defined in Section 1357.6 (C) as" a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to: 1. Artificially replace a missing portion of the body; 2. Prevent or correct physical deformity or malfunction; or 3. Support a weak or deformed portion of the body. Provided, the term shall not include corrective eye-glasses, contact lenses or hearing aids." Since none of the items listed in the three categories above replace a missing part of the human body, they are not exempt when purchased by an individual.

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. See Commission Rule 710:65-13-173(d) which contains a list of exempt medical equipment for Medicaid or Medicare recipients. The Rule expressly provides that to qualify for exemption the cost of the item purchased must be reimbursed by the Medicare or Medicaid program.

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,

OKLAHOMA TAX COMMISSION



Brenda J. Sullivan
Tax Policy Analyst

Enclosure