OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

PHONE (405) 521-3133
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May 5, 2010

Re: LR-10-025; Sales Tax Inquiry

Dear

This is in response to your request for a formal letter ruling regarding the application of sales and use tax to certain products sold by ("Client"). What follows are the pertinent facts presented in your correspondence along with the questions posed and the responses thereto.

FACTS

Client develops and manufactures sports medicine and soft tissue repair devices. Client sells suture anchoring implants ("anchors") for tissue reattachments namely on the hand, wrist, thumb, ankle and shoulder. These anchors are positioned within the body and remain there after surgery. Client also sells bioreplaceable screws ("bone screws") which hold soft tissue, tendon and grafts in place during the healing phase and are absorbed within the body over a period of time. Client sells the anchors and bone screws (collectively the "Products") to its customer base of doctors, hospitals, surgical centers and/or medical facilities.

It is common for Client's customer to place an order for various sizes and variations of Products in preparation for an upcoming surgery. The customer may use all, some or none of the Product during a patient surgery. Client is not provided with the specific patient information at the time the order is placed and shipped to its customer.

ISSUE

1. For Oklahoma sales and use tax purposes, would the sale of Products be considered taxable when sold to doctors, hospitals, surgical centers and/or medical facilities that may or may not subsequently dispense or provide to a Medicare/Medicaid recipient?

Yes, your client is required to collect state sales/use and any applicable local tax on its sales of sports medicine and soft tissue repair devices made to doctors, hospitals, surgical centers, and/or medical facilities in Oklahoma and report and remit same to the Oklahoma Tax Commission.

2. If the answer to the first question is yes, would doctors, hospitals, surgical centers and/or medical facilities be able to obtain a refund if the Product is subsequently dispensed or provided to a Medicare/Medicaid recipient?

Yes, should these items ultimately qualify for exemption pursuant to 1357.6 of Title 68, a refund of the sales/use taxes paid may be claimed pursuant to Section 227 of Title 68. See also, OAC 710:65-11-1.

3. If the answer to the second question is yes, is the refund pursued through the seller of the Product or the Commission?

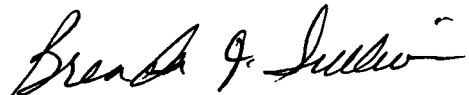
A refund application may be made by the vendor or its customer by forwarding Form 13-19 *Application for Credit or Refund of State and Local Sales or Use Tax* with supporting documentation to the Credits/Refunds Section, Account Maintenance Division of the Oklahoma Tax Commission. See also OAC 710:65-13-173(d).[1]

Copies of the referenced statutory and administration code provisions are enclosed.

This response applies only to the circumstances discussed in your request of September 28, 2009. Pursuant to Oklahoma Administrative Code 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



Brenda J. Sullivan
Tax Policy Analyst

[1] While the amendment to subsection (d) of OAC 710:65-13-173 is pending Legislative and Gubernatorial Review and will not be effective until the end of June, 2010, the referenced amendment reflects current policy regarding the information required to document a claim for refund under the circumstances stated therein.