July 28, 2010

RE: LR-10-041
Sales Tax Inquiry

Dear [Unreadable],

I am writing this letter in response to your request regarding sales tax. Set forth are the facts presented verbatim along with the responses thereto.

We sell the line of custom fitted sports mouth guards. The dentist will take an impression of the patient’s teeth and send it in to produce a custom fitted mouth guard in one of three versions. A mouthpiece designed for the most comfortable fit to be used in non contact sports, and a mouth guard version available with or without a strap designed to offer additional protection for contact sports.

When we sell this item to a dentist, is one or more of these versions exempt as a dental service, a prescription medical device, a prosthetic device, or safety gear?

If this item is viewed as a sale of tangible personal property rather than a dental service, can we accept a resale certificate from the dentist, and should they be charging tax on the sale to the patient?

Our Response:

Prosthetics are defined under O.S. 68 § 1357.6 (c) as 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.

Durable medical equipment is defined under O.S. 68 § 1357.6 (d) as equipment, including repair and replacement parts, for same, which:
1. Can withstand repeated use;
2. Is primarily and customarily used to serve a medical purpose;
3. Generally is not useful to a person in the absence of illness or injury; and
4. Is not worn in or on the body.

The mouthpieces are considered to be tangible personal property and not as a dental service, a prescription medical device, or a prosthetic device. In addition, Oklahoma statutes do not provide a specific exemption for the purchase of safety equipment; therefore Oklahoma Sales and Use Tax should be collected on the sale of your product.

When selling your product to a dentist in Oklahoma, Oklahoma Sales and Use tax should be charged since dentist render services and generally are not in the business of making sales of tangible personal property for resale purposes as described in Oklahoma Tax Commission Rule 710:65-19-71(copy enclosed). However, if a dentist provides you with an Oklahoma Sales Tax Permit, and provides you with information that the purchase is for resale purposes, then you may exempt the sale from Oklahoma Sales and Use Tax as described in Oklahoma Tax Commission Rule 710:65-13-200.

This response applies only to the circumstances discussed in your written request of February 24, 2010. 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,

[Signature]

Oklahoma Tax Commission
Marc Morrison
Tax Policy & Research Division