Re: LR-10-048 Sales Tax Inquiry

Dear:

This is in response to your request for a written response regarding the taxability of several medical products and equipment listed in your correspondence and to confirm if they are considered Durable Medical Equipment according to the definition posted on the SST website. Set forth is the list of medical products and equipment presented and the response thereto.

- Tracheotomy tubing and care supplies endotrachal tube is a catheter inserted in the trachea to maintain a patent airway.

- IV equipment (needle, catheter(tubing), fluid bags, pole/stand) - intravenous infusion administration of fluids into a vein by means of a steel needle or plastic catheter, used most often to maintain fluid and electrolyte balance, or to correct fluid volume deficits. Many medications are administered by this route.

- Insulin Pumps - a device consisting of a syringe filled with a predetermined amount of short-acting insulin, a plastic cannula and a needle, and a pump that periodically delivers the desired amount of insulin.

- Tens (transcutaneous electrical nerve stimulation (TENS) transcutaneous neural stimulation (TNS) - use of a battery-powered device to relieve acute or chronic pain. Electrodes attached to the skin transmit electrical impulses that produce a mild tingling, tapping, or massaging sensation. The effectiveness of this method is thought to depend on its interruption of pain impulses from the periphery to the central nervous system, increased production of endorphins, and improved blood supply to the affected part; an increased blood supply encourages healing and helps reduce muscle spasm.

- Respirator masks — Air purifying mask that is reusable.
• CPAP Machines and Masks — (continuous positive airway pressure (CPAP) a method of positive pressure ventilation used with patients who are breathing spontaneously, done to keep the alveoli open at the end of exhalation and thus increase oxygenation and reduce the work of breathing.

• Yankauer suction tip and tubing - a tip attached to a suction tube for bedside suctioning of an artificial airway.

• Restraints - the forcible confinement or control of a person. Specifically, restraint to a bed, wheelchair or chair,

RESPONSE

The sale of tangible personal property in Oklahoma, unless specifically exempted by the provisions of the Oklahoma Sales Tax Code, is subject to the levy of sales tax. 68 O.S. §1354(A)(1). Section 1357.6 of Title 68 exempts sales of medical appliances, medical devices and other medical equipment, prosthetic devices, durable medical equipment and mobility enhancing equipment when 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 the item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid.

Additionally, “sales of prosthetic devices to an individual for use by such individual” are exempt from sales tax. 68 O.S. § 1357(22). Prosthetic device is defined in Section 1357.6(C) of Title 68 as follows:

The term ‘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.

1 Durable medical equipment means equipment including repair and replacement parts for same, which can withstand repeated use, is primarily and customarily used to service a medical purpose, generally is not useful to a person in the absence of illness or injury; and is not worn in or on the body. The term does not include mobility enhancing equipment. 68 O.S. § 1357.6(D)

2 Mobility enhancing equipment means equipment, including repair and replacement parts for same, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle, is not generally used by persons with normal mobility, and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. Mobility enhancing equipment does not include durable medical equipment. 68 O.S. § 1357.6(E).

3 Practitioner means “a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.” 68 O.S. § 1357.6(B)
Sales of the items set forth above qualify as a type of medical equipment, appliance or device as outlined in Section 1357.6 of Title 68 and are exempt from sales tax when prescribed by a practitioner, sold to or purchased on behalf of a Medicare/Medicaid recipient, and are reimbursed by Medicare or Medicaid. Moreover, insulin pumps and Tens units when worn on the body constitute prosthetic devices as defined by Section 1357.6(C) and under the circumstances where the sale thereof meets the parameters of the exemption in Section 1357(22) of Title 68, are exempt from sales tax.

This response applies only to the circumstances discussed in your request of March 19, 2010. 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

[Signature]
Brenda J. Sullivan
Tax Policy Analyst