

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

PHONE (405) 521-3133
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August 24, 2011

Re: Our File No. LR-11-023; Sales Tax Inquiry

Dear _____:

I am writing in response to your request regarding Oklahoma sales and use tax. Set forth verbatim are the facts and discussion presented in your correspondence of January 21, 2011, along with the responses thereto.

Facts:

Our client is a health care provider and runs a system of hospitals. One of the products used in surgeries performed in client's hospital is _____ and is purchased from _____. It is our understanding that the product is used to assist with the generation of bone. Certain proteins that occur naturally within the human body have been shown to aid in bone generation. These proteins either exist in small amounts in the human body or are difficult to transplant. Consequently, a process was developed to produce large quantities of this protein. According to conversations with medical doctors employed by _____, the protein is produced by splicing a human gene with a Chinese hamster ovary cell. When spliced, this creates the protein that is used in the product. The product produced is genetically identical to the protein that occurs naturally within the human body. The product, _____, consists of both the protein and a carrier. The protein is purchase in a powder form. The protein is mixed with sterile water and placed on a bovine collagen sponge that serves as the carrier for delivery.

Discussion:

Pursuant to our previous discussions and relation to 42 USC 274(e), it is our understanding that the State of Oklahoma does not subject human tissue to sales / use tax. As such, we feel that the _____ product should not be considered taxable for

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sales / use tax purposes since it is derived from human tissue (by splicing human genes with animal cells to produce the protein).

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).

“Sales of prosthetic devices to an individual for use by such individual” are exempt from sales tax in accordance with 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.

* * *

Since the _____ is a device worn in the body to replace a missing part of the human body, it constitutes a prosthetic device pursuant to Section 1357.6(C).

However, the sales tax exemption found in Section 1357(22) of Title 68 does not apply to purchases of prosthetic devices by health care providers.

Pursuant to Oklahoma Administrative Code 710:65-13-170(c), sales of medical appliances, medical devices and other medical equipment including prosthetic devices to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In-state vendors collect and remit the tax on sales of such property to the institutions, and use tax is due on out-of-state purchases.

Additionally, Section 1357.6 of Title 68 exempts sales of medical appliances, medical devices and other medical equipment, prosthetic devices, durable medical equipment¹ and mobility enhancing equipment² when the item is administered or distributed by a practitioner³ or

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

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.

Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales or use taxes previously paid by the institution or practitioner on such items. The documentation set out below must be obtained 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; 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.

Oklahoma Administrative Code 710:65-13-173(d).

Attached are copies of the cited Oklahoma statutes and administrative rules for your review.

This response applies only to the circumstances discussed in your written request of January 21, 2011. Pursuant to Oklahoma Administrative Code 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
Tax Policy Analyst

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)