

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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August 24, 2011

RE: LR-11-038 (Sales Tax Inquiry)

Dear [REDACTED]

I am writing in response to your request regarding the required documentation to exempt the sale of medical appliances, devices, and other medical equipment that is furnished to a Medicare/Medicaid program recipient. Set forth verbatim are the facts presented along with the responses thereto.

Facts:

On behalf of our client, a major medical device and supply manufacturer and retailer, we seek clarification as to the exempt status of the products they sell in your state. Upon reviewing the applicable statute, regulation, and other guidance, it appears that for an exemption to apply to certain medical products, such as medical appliances, devices, and other medical equipment as outlined under Okla. Admin. Code 710:65-13-173(a), such items must be sold within a prescriptive manner if not upon the particular prescription of a licensed healthcare professional.

As the applicable statute and regulation suggest that documentation must be transferred or minimally communicated within some lesser form from the purchaser to the seller, we were hoping you would be able to provide some further detail as to what would be accepted by the state as being in compliance with these "prescription" requirements. To clarify, our client transacts with hospitals, hospital purchasing groups, and doctor's offices. Currently, physical prescriptions are not provided to the sales person nor are patient specific prescriptions communicated verbally; however, requisite medical labels (e.g., Rx labels) are contained on the packaging of the medical products. Furthermore, our client solely transacts with those customers authorized to administer the items purchased.

Accordingly, we are hoping you could confirm that to the extent that a medical supply or product is in compliance with the provisions of Okla. Admin. Code 710:65-13-173(a) and would otherwise qualify for an exemption based on the manner in which the item is used; such exemption would not be disallowed in the absence of a written or verbal prescription.

Response:

Pursuant to Oklahoma Administrative Code 710:65-13-170(c), sales of medical appliances, medical devices and other medical equipment 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.

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.

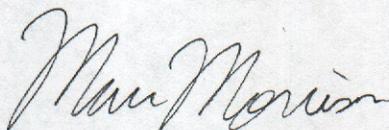
Oklahoma Administrative Code 710:65-13-173(d).

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

This response applies only to the circumstances discussed in your written request of September 21, 2010. 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