OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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October 19, 2011

Re: LR-11-109; Sales Tax Inquiry

Dear

This is in response to your request for a letter ruling regarding sales and use tax of the products your client ("Taxpayer") sells. Set forth are the fact presented along with the question posed and the response thereto.

FACTS

Taxpayer is located outside Oklahoma. It sells sutures, surgical mesh, surgical staple products, and other similar wound correction and support devices (Devices). The Devices stay in the body after surgery and can only be used by licensed physicians or under a licensed physician's order (they are labeled "RX Only" by federal law). Taxpayer sells the Devices to healthcare practitioners such as hospitals, physicians' offices, nursing homes, medical clinics, and surgical centers.

QUESTION

Are Taxpayer's sales of Devices labeled "RX Only" to healthcare practitioners exempt from sales tax?

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.

* * *

However, please note that 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 equipment[1] and mobility enhancing equipment[2] when the item is administered or distributed by a practitioner[3] 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.

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.

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[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)

Oklahoma Administrative Code 710:65-13-173(d).
Attached are copies of the cited Oklahoma statutes and administrative rule provisions.

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

Brenda J. Sullivan
Tax Policy Analyst