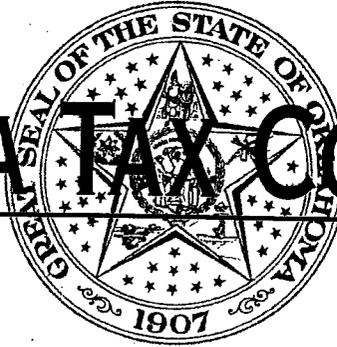


OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

May 2, 2013

Re: LR-12-099;

Dear

This is in response to your request for a determination of the taxability of your products and the governing sales tax laws in Oklahoma. Set forth are the facts presented and the response thereto.

FACTS

Our company is engaged in the manufacture and distribution of cardiovascular blood management products such as chest drains used after open-heart surgery, thoracic catheters, auto-transfusion devices, synthetic artery products as well as Covered Stents. From time to time we may sell our products to for-profit and/or not-for-profit healthcare organizations within your state.

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.

* * *

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 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).

Neither of the above-referenced exemptions applies to sales of medical appliances, medical devices and other medical equipment including prosthetic devices to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners. The institutions, companies and practitioners are considered to be the users or consumers of all tangible personal property and services used in the provision of health care services and operation of the institution. OAC 710:65-13-170(c).

Therefore, Atrium's sales to health care providers in Oklahoma of the items outlined in the facts referenced above and in the survey provided are subject to sales/use tax.

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).

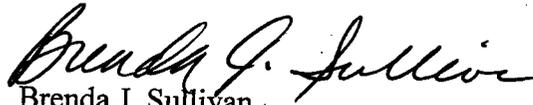
³ Practitioner means "a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law." 68 O.S. § 1357.6(B)

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

This response applies only to the circumstances discussed in your request of October 31, 2012. 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

A handwritten signature in cursive script that reads "Brenda J. Sullivan".

Brenda J. Sullivan
Tax Policy Analyst