

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
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October 3, 2013

Re: LR-13-62 (Sales Tax Inquiry)

Dear :

This is in response to your request for a determination of the taxability of a device. Set forth verbatim are the facts presented in your correspondence of August 27, 2013 along with the question posed and our response thereto.

Facts

Th purchases devices from . Th is an FDA approved micro stimulation device used for pain therapy. charges the tax on the devices. provides the procedure and the device to their patients, and then bills Medicare.

Question

Must the pay tax on the devices?

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). The Oklahoma Sales Tax Code does not contain a blanket exemption for sales of medical products such as the . Further, hospitals, clinics and similar institutions in addition to physicians are considered to be the users or consumers of all tangible personal property and services used in the provision of health care services. OAC 710:65-13-170(c). Therefore, under the described circumstances, because

does not hold an Oklahoma direct pay permit,¹ it should pay sales/use tax to _____ on purchase of these devices. Should _____ wish to apply for an Oklahoma direct pay permit, application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, PO Box 26920, Oklahoma City, OK 73126, completed forms, Oklahoma Business Registration Application and Direct Pay Permit Application.

Under the circumstances where _____ dispenses or provides the _____ or other medical devices to Medicare or Medicaid patients a refund claim may be made for the sales or use taxes previously paid by _____ on such items pursuant to Section 1357.6 of Title 68 which exempts sales of medical appliances, medical devices and other medical equipment, prosthetic devices, durable medical equipment² and mobility enhancing equipment³ when the item is administered or distributed by a practitioner⁴ 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. 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).

A refund application may be made by forwarding Form 13-19 *Application for Credit or Refund of State and Local Sales or Use Tax*, with supporting documentation referenced above to the Credits/Refunds Section, Account Maintenance Division of the Oklahoma Tax Commission. See OAC 710:65-11-1.

Attached are copies of the above-referenced Oklahoma statutes; Oklahoma Tax Commission administrative rule provisions and forms.

¹ Pursuant to issuance of a direct payment permit Oklahoma law authorizes a business in Oklahoma to make direct payment to the Oklahoma Tax Commission of sales and/or use taxes rather than paying the taxes to the vendor when making purchases of items for use or to be consumed in the business. 68 O.S. § 1364.1

² 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)

³ 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).

⁴ 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)

This response applies only to the circumstances discussed in your request of August 27, 2013. 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 black ink that reads "Morgan E. Lankford". The signature is written in a cursive style with a large initial "M".

Morgan E. Lankford
Tax Policy Analyst