

OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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July 7, 2014

Re: LR-13-069

Dear

This is in response to your request to confirm whether would be classified as an exemption prescription drug or a prosthetic device under Oklahoma's Sales Tax Rules. Set forth are the facts presented along with the response thereto.

FACTS

The are a prescription treatment for malignant liver tumors in the form of "beads" that are coated in a radioactive isotope (Yttrium-90) that are injected into the liver in a hospital setting (see attached description). Under the attached streamline definitions, a radioactive isotope is a considered a drug. Please confirm that this would be considered a prescription "drug" within Oklahoma's Rule 710:65-13-170 (a).

RESPONSE

Please be advised that sales of drugs¹ sold pursuant to a prescription written for the treatment of human beings by a person licensed to prescribe the drugs are exempt from the levy of sales tax in

¹ Pursuant to Section 1352(8) of Title 68, drug means a compound, substance or preparation, and any component of a compound, substance or preparation:

- a. recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopoeia of the United States, or office National Formulary, and supplement to any of them,
- b. intended of use in the diagnosis, cure, mitigation, treatment, or prevention of disease, or
- c. intended to affect the structure of any function of the body.

Oklahoma. 68 O.S. § 1357(9). This exemption does not apply to sales of over-the-counter drugs².

The meet the definition of drug set forth in Section 1352(8) of Title 68 of the Oklahoma Statutes. To qualify for exemption the sale of the microspheres must meet the parameters of Section 1357(9) of Title 68. Specifically, the microspheres must be drugs for which a prescription is required and be used for the treatment of human beings. Based on the above stated facts, it appears that the sale of microspheres is exempt from the sales tax levy pursuant to Section 1357(9) of Title 68.

This response applies only to the circumstances discussed in your request of September 23, 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



Brenda J. Sullivan
Tax Policy Analyst

² Over-the-counter drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- a. a Drug Facts' panel, or
- b. a statement of the "active ingredients(s)" with a list of those ingredients contained in the compound, substance or preparation. 68 O.S. § 1352(17).