

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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



Dear

Re: LR-14-044

This is in response to your request for a ruling of the taxability of sales of which is described in the facts outlined below.

FACTS

I work for _____ and we are a medical device manufacturer. One of our products is an _____ which is resorbed into the bone naturally during the bone remodeling process. The description of the item is quoted below from a press release dated 2/8/12.

_____ announced today the introduction of _____ which consists of simple pre-cut allograft wedges for both _____ and _____ osteotomies and a dedicated instrumentation set that is designed to provide a method of assessing osteotomy space to aid in the selection of the appropriate implant.

Osteotomies are procedures in which surgeons realign or remove a segment of bone located near a damaged joint to help correct deformities, typically in the foot.

_____ is designed to provide bone grafting material for osteotomy corrections. The _____ is processed from human cancellous bone, sterilized through the _____ and terminally sterilized using a validated method to achieve a _____ of 10^{-6} . The wedge provides a natural scaffold for bone growth, as well as biologic stability and structural support for deformity corrections. It also eliminates significant harvest site morbidity that may result from autograft removal. _____ will feature the implant at the American Academy of Orthopaedic Surgeons Annual Meeting, February 7-11, 2012 in San Francisco, California. _____ offers four sizes (6, 8, 10 and 12mm), which give surgeons a significant addition to their treatment options and helps limit uncertainty by accommodating a patient's unique surgical needs," said Vice President and General Manager,

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).

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.

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.

* * *

Since the _____ is a device worn in the body to prevent or correct a physical deformity or malfunction, it constitutes a prosthetic device pursuant to Section 1357.6(C). However, 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.

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)

Unless the purchasing health care provider holds an Oklahoma direct pay permit⁴, should
collect and remit sales/use tax on sales of made in this state.

Attached are copies of the cited Oklahoma statutes and administrative rule provisions.

This response applies only to the circumstances discussed in your request of July 14, 2014. 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

⁴ 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