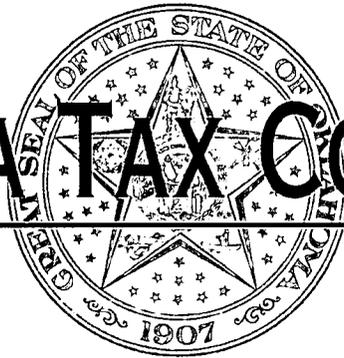


OKLAHOMA TAX COMMISSION



TAX POLICY DIVISION
RICK MILLER, DIRECTOR

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

October 13, 2016

Dear

Re: Our File No. LR-16-020

This is in response to your sales tax inquiry relating to the classification of certain items as drugs for purposes of the sales tax exemption in Section 1357(9) of Title 68. Set forth below are your facts presented along with our response thereto.

Facts

owns and operates multiple clinics and hospitals in the state of Oklahoma. We purchase Mirena, Nexplanon, Skyla and Liletta for distribution to our patients at clinic locations that have met the drug manufacturer's requirements to distribute. This includes being certified in clinical training for the product and providing the physicians medical license.

Question

Are sales to of Mirena, Nexplanon, Skyla and Lilett for distribution to patients at their clinics exempt from sales tax?

Response

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 Oklahoma. 68

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.

O.S. §1357(9). This exemption does not apply to sales of over-the-counter drugs². As a hormonal birth control implant or intrauterine device (“IUD”)/intrauterine system (“IUS”), Mirena, Nexplanon, Skyla and Liletta meet the definition of drug set forth in Section 1352(8) of Title 68 of the Oklahoma Statutes. To qualify for exemption, the sale must meet the parameters of Section 1357(9) of Title 68. Specifically, the items in question 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 described sale to _____ of Mirena, Nexplanon, Skyla and Liletta is exempt from sales tax.

This response applies only to the circumstances discussed in your request received May 3, 2016. 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).