

# OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION  
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May 10, 2005

Re: Our Files Number LR-05- 059 and 060; Taxability of medical devices and products

We submit the following in reply to your request for a determination of the sales taxability of your company's products classified as Kinetic Therapy, Pressure Relief and Reduction Therapies and Bariatric Support Systems.

Please be advised that medical products themselves are not exempt based on their use or status as prescription or non-prescription health care products.

Section 1357 (20) of Title 68 O.S. exempts "sales of prosthetic devices to an individual for use by such individual." "Prosthetic device" is defined in Section 1357.6 (C) as " a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to: 1. Artificially replace a missing portion of the body; 2. Prevent or correct physical deformity or malfunction; or 3. Support a weak or deformed portion of the body." Under these statutory provisions an individual nor a health care provider or hospital cannot purchase the items in question exempt.

A health care provider may purchase legend drugs, oxygen, insulin and ocular implants exempt from sales and use tax. Other medical products, supplies and devices sold to health care providers for use in providing medical or patient care would be subject

to tax. While there is an exemption for medical supplies purchased or leased on behalf of patients who are reimbursed by Medicaid and Medicare, this exemption does not extend to purchases made by health care facilities, but only to a vendor's direct sales to a patient who is a Medicaid or Medicare recipient. Additionally, the sale of any prosthetic device to an individual, other than a Medicare or Medicaid recipient, for use by that individual, is not subject to sales tax. Hence, if a physician determines that a patient needs a prosthetic device and purchases the prosthetic device specifically designed for that patient, the purchase is made on behalf of the individual and will not be subject to the tax. Please note there are facilities, which are exempt on their purchases of tangible personal property and taxable services because of their status as federal institutions or as political subdivisions of the State of Oklahoma. See Sections 1356 and 1357.6 of Title 68, Oklahoma Statutes and Oklahoma Tax Commission Rules 710:65-1-7, 710:65-7-6, 710:65-13-130, 710:65-13-169, 710:65-13-170, 710:65-13-171 and 710:65-19-142. Also, note Commission Rule 710:65-13-173(d) which contains a list of exempt medical equipment for Medicaid or Medicare recipients.

Other entities not listed in the above discussions would be subject to tax on their purchases if they do not have a resale certificate. However, in order for a vendor to be relieved of liability to collect sales tax proper documentation to substantiate the exempt status of the organization must be retained in the vendor's records. Please note that Tax Commission Rule 710:65-7-6, a copy of which is enclosed, "**Vendor's relief from liability and duty to collect sales tax**", describes in detail the requirement needed to establish "**properly completed documentation certified by the Tax Commission**".

Copies of the statutory references and rules are enclosed. If I can be further assistance, please write or contact me at (405) 521-3133.

Sincerely,



Brenda J. Sullivan  
Tax Policy Analyst

Enclosure