**Opinion Letter**

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| **Letter Number:** | **O-2010-006** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales tax in Kansas as applied to sales of medical items.** |
| **Keywords:** |  |
| **Approval Date:** | **06/23/2010** |

**Body:**

Office of Policy & Research

June 23, 2010

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RE: Your e-mail received April 26, 2010

Dear Dr. XXXXX:

Thank you for your recent e-mail that lists a number of medical items. You ask if sales of the items are subject to Kansas retailers' sales tax. You are a Doctor of Chiropractic.

The Streamlined Sales Tax Project (SSTP) publishes a uniform classification table for medical items, such as the ones in your list. Medical items may be classified as prosthetic devices, durable medical equipment, mobility enhancing equipment, medical supplies, clothing, OTC drugs, prescription drugs, and so forth. This uniform classification remedies some of the problems caused when different states classify the same medical item as a different type of device. For example, before the classification table was adopted, some member states would classify a particular medical device as durable medical equipment, while others would classify the same device as mobility enhancing equipment. This continues to occur with States that are not members of the SSTP. It is problematic for nationwide vendors of medical items that are required to track how their sales are taxed in different states.

SSTP states continue to tax or exempt the sale of medical items as their legislatures see fit. However, SSTP states generally tax or exempt sales of medical items based on the classes established by the SSTP.

A state that does not exempt a class of devices for sales tax can exempt a medical item within the class by specifically listing it in an exemption statute. For example, the SSTP classifies oxygen delivery equipment and kidney dialysis equipment as durable medical equipment. Kansas statutes do not exempt sales of durable medical equipment except to certain nursing homes. K.S.A. 2009 Supp. 79-3606(r) does, however, specifically exempt sales of oxygen delivery equipment and kidney dialysis equipment. The Kansas legislature wanted to exempt sales of oxygen delivery and dialysis equipment but did not want to enact a broad exemption for sales of other durable medical equipment.

I will list the medical items that you asked about and identify how each one is classified in the SSTP table. I will then review how the different classes or items are treated under the Kansas retailers' sales tax act.

**Medical Item SSTP Classification**

Orthopedic cervical pillows E0919 *Durable medical equipment*

Carpal Tunnel Braces L3908 *Prosthetic Device*

Carpal Tunnel Night Splints *Prosthetic Device*

TENS units E0737 *Prosthetic Device if worn,*
*Durable medical equipment if not worn*

Electro-pads for TENS use at *Not classified*
home A4556

Molded Foot Orthotics L3030 *Prosthetic Device*

Cervical nonadjustable collar L0120 *Prosthetic Device*

Lumbosacral support belt L0515 *Prosthetic Device*

K.S.A. 79-3606(r) exempts sales of prosthetic devices prescribed in writing by a person licensed to practice the healing arts. Accordingly, sales of the listed items classified above as Prosthetic Devises are exempt when you sell them to a patient in the course of your practice or when a patient purchases them for a supplier with a prescription you issue. *See Department of Revenue Q & A,* *Prescription Requirement in Sales Tax Exemption for Prosthetic Devices and Mobility Enhancing Equipment.*

A TENS or TeNS unit is a Transcutaneous electrical nerve stimulation used to treat pain. A TENS unit is usually connected to a patient's skin by two or more electrode pads. TENS applies small electric pulses that excite nerves that stimulate muscle contractraction.

The SSTP has classified TENS units that are worn by a patient as prosthetic devices. Like other prosthetic devices, sales of these units are exempt when you sell them to a patient in the course of your practice or when a patient buys one with a prescription that you issue.

The SSTP has classified TENS units that are *not* worn by a patient as durable medical equipment. Sales of these units to patients are subject to sales tax, because sales of durable medical equipment are generally taxable. You are required to charge Kansas sales tax when you sell them to patients in the course of your practice. Medical supply houses are required to charge and collect sales tax on the sale or rental of the unit, even when a patient has been issued a prescription for the TENS device. Sales of orthopedic cervical pillows are also taxable because such pillows are classified as durable medical equipment.

Sales of durable medical equipment are only exempt when sold to certain nursing homes or to exempt entities that can claim exemption on their purchases, such as a non-profit hospitals and blood banks. This limited exemption is contained in K.S.A. 79-3603(hh). It exempts:

all sales of medical supplies and equipment, including durable medical equipment, purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes. As used in this subsection, "durable medical equipment" means equipment including repair and replacement parts for such equipment, which can withstand repeated use, is primarily and customarily used to serve 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, but does not include mobility enhancing equipment as defined in subsection (r), oxygen delivery equipment, kidney dialysis equipment or enteral feeding systems;

Electro-pads for TENS use at home are not listed in the SSTP classification table. Some SSTP states currently tax or exempt these pads based on whether the pads are intended to be used with TENS unit that a patient wears on his or her body or with a TENS unit that is not worn on the body. Since you describe the TENS electro-pads as being for home use, I assume the pads are for a TENS unit that is not worn on the body. Charges for these pads are taxable. Charges for pads that are intended to be used with a TENS unit that is worn on the body are exempt.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 06/24/2010 Date Modified: 06/24/2010**