

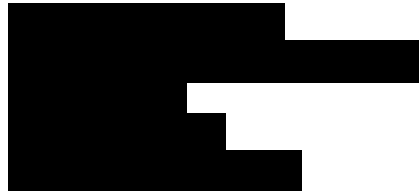


STATE OF ARKANSAS
**Department of Finance
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February 25, 2016



RE: Taxability of purchase of ultrasound equipment.
Opinion 20151207

Dear [REDACTED]:

This letter is sent in response to your December 15, 2015 request for opinion. In your letter, you ask whether a sales tax exemption would be available for the purchase of ultrasound equipment. The pertinent facts as I understand them are as follows:

1. [REDACTED] (Requestor) has received grants that will allow it to buy a medical ultrasound.
2. The Requestor was conceived by members of [REDACTED].
3. Over time, the Requestor formed medical, dental, gynecological, vision, and counseling clinics.
4. The clinics do not appear to provide beds for the overnight stay of patients and each clinic appears to provide a limited range of medical services.
5. The request does not indicate whether patients of the clinics are required to pay for the services rendered by the clinics nor does it indicate whether the clinics are operated on a non-profit basis.

Response

In Arkansas, sales of tangible personal property, such as the ultrasound equipment identified in your request for opinion, are subject to gross receipts (sales) tax under Ark. Code Ann. § 26-52-301(1) (Repl. 2014) unless an exemption applies. There are four exemptions that apply to sales of medical and dental equipment; however, none of them would be available for the Requestor's

purchase of the ultrasound equipment. A list of the exemptions and my analysis of the applicability of each exemption is set forth in more detail below.

Exemption 1: Rental or sale of medical equipment to certain persons. The provisions of Ark. Code Ann. § 26-52-401(20) provide an exemption from tax for the rental or sale of medical equipment to persons enrolled in and eligible for Medicare or Medicaid programs. As the ultrasound equipment is not being sold directly to a person enrolled in and eligible for Medicare or Medicaid programs, this exemption would not apply.

Exemption 2: Sale of tangible personal property or services to hospitals or sanitariums. The provisions of Ark. Code Ann. § 26-52-401(21) provide an exemption from tax for the sale of tangible personal property (such as ultrasound equipment) or services to hospitals or sanitariums operated for charitable and nonprofit purposes or to any nonprofit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital. Arkansas Gross Receipts Tax Rule GR-37, a copy of which is enclosed, defines a hospital as an institution that provides: medical and surgical care for the general public, beds for the overnight stay of patients, and a broad range of medical and surgical services. Similarly, the rule defines a sanitarium as an institution that provides long-term in-patient care or mental treatment. As there is no indication that the Requestor provides beds for the overnight stay of patients, long-term in-patient care, or surgical services (or that the clinics are operated for a charitable and nonprofit purpose) it would not be eligible for this exemption.

Exemption 3: Sales of durable medical equipment, etc. The provisions of Ark. Code Ann. § 26-52-433 provide an exemption from tax on the sale of durable medical equipment, mobility enhancing equipment, prosthetic devices, and disposable medical supplies prescribed by a physician. Ultrasound equipment is not prescribed for patient use and does not meet the definitions of durable medical equipment, mobility enhancing equipment, prosthetic devices, or disposable medical supplies. Therefore, this exemption would not apply. I am enclosing a copy of Arkansas Gross Receipts Tax Rule GR-38.2 which provides additional information about this exemption, including the relevant definitions.

Exemption 4: Sales of dental appliances. The provisions of Ark. Code Ann. § 26-52-448 provide an exemption for sales of dental appliances to or buy dentists, orthodontists, oral surgeons, maxillofacial surgeons, or endodontists. The term “dental appliance” means a dental device that is made for a specific patient. The ultrasound equipment at issue in your request does not meet the definition of a dental appliance and this exemption would not apply.

Conclusion

The only exemption that might be available for the purchase of the ultrasound equipment is the exemption available to hospitals and sanitariums. However, this exemption would not be available to the Requestor.

This opinion is based upon my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any changes in the facts or law could result in a different opinion. Please be advised that this opinion may only be relied upon by the company

and will only be binding upon the Department for three (3) years from the date of issuance. See Arkansas Gross Receipts Tax Rule GR-75, a copy of which is enclosed.

Sincerely,

Michelle L. Baker, Attorney
Revenue Legal Counsel

Enclosures