

## Nebraska Sales and Use Tax for Physicians

### Overview

Charges for a physician's professional services are not subject to sales tax.

Physicians are the consumers of all medical supplies, medical equipment, office supplies, and business equipment they use to provide their services. Physicians owe Nebraska and local sales or use tax on their purchases of these items.

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### Terms

**Note.** These terms are not the same definitions used by the Nebraska Department of Health and Human Services (Nebraska DHHS).

**Drugs.** Drugs are compounds, substances, and preparations sold to a patient with a prescription, and which meet all of the following criteria:

- ❖ Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement of them;
- ❖ Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;
- ❖ Intended to affect the structure or any function of the human body;
- ❖ Are not food, food ingredients, dietary supplements, nor alcoholic beverages; **and**
- ❖ Are not over-the-counter drugs.

**Durable Medical Equipment.** Durable medical equipment is equipment which:

- ❖ Can withstand repeated use;
- ❖ Is primarily and customarily used to serve a medical purpose;
- ❖ Is generally not useful to a person in the absence of illness or injury;
- ❖ Is appropriate for use in the patient's home, **and**
- ❖ Is not worn in or on the body.

Durable medical equipment includes repair and replacement parts for durable medical equipment.

**Home Medical Supplies.** Home medical supplies are supplies which are:

- ❖ Primarily and customarily used to serve a medical purpose;
- ❖ Appropriate for use in the home; **and**
- ❖ Generally not useful to a person in the absence of illness or injury.

**Mobility Enhancing Equipment.** Mobility enhancing equipment is equipment which is:

- ❖ Primarily and customarily used to provide or increase the ability to move from one place to another;
- ❖ Generally not used by persons with normal mobility; **and**
- ❖ Appropriate for use either in a home or motor vehicle.

Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle that is normally provided by a motor vehicle manufacturer.

**Over-the-Counter (OTC) Drugs.** Over-the-counter drugs are drugs that have a label identifying the product as a drug as required by 21 C.F.R. 201.66, as this regulation existed on January 1, 2003. The OTC drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

**Oxygen Equipment.** Oxygen equipment is equipment used to dispense, hold, or transport oxygen for a medical purpose.

**Physician.** A physician is a medical practitioner licensed under the Nebraska Uniform Credentialing Act who is authorized to prescribe drugs, oxygen, prosthetic devices, mobility enhancing equipment, durable medical equipment, or home medical supplies within the scope of his or her practice.

**Prescription.** A prescription means an order done in writing, orally, or electronically by a licensed medical practitioner under the Nebraska Uniform Credentialing Act for a drug or device for human use.

**Prosthetic Devices.** Prosthetic devices are replacement, corrective, or supportive devices worn on or in the body to:

- ❖ Artificially replace a missing portion of the body;
- ❖ Prevent or correct physical deformity or malfunction; **or**
- ❖ Support a weak or deformed portion of the body.

Prosthetic devices include any supplies used **by the patient** with the device, and repair and replacement parts after placement of the device on or in the patient. For surgically implanted devices, only the devices which remain in or on the patient after the procedure are considered prosthetic devices eligible for tax exemption. Supplies **used by the patient** in connection with the implanted device are also exempt from tax.

**Retail Sales.** Retail sales are sales made to the patient which are not made in conjunction with the physician's professional services. The physician is a retailer, not a service provider, when making retail sales, and is required to obtain a sales tax permit.

## **Tax-Exempt Services to the Patient**

The following charges to patients are sales tax exempt:

- ❖ Charges for a physician's professional services provided to patients;
- ❖ Charges directly billed under Part B of Medicare; and
- ❖ Charges directly billed to and paid by the State of Nebraska, under Medicaid.

## Purchases by Physicians

### Taxable

Physicians are consumers of the supplies, instruments, diagnostic and treatment equipment, and office equipment used in providing their professional services and must pay the Nebraska and any applicable city or county (local) sales tax to their vendors on all purchases and leases of these items. Purchases of maintenance or service agreements covering the instruments and equipment are taxable. If the vendor does not collect the Nebraska and local sales tax, the physician is responsible for paying the state and local use tax on the cost of the items directly to the Department. This includes purchases made at trade shows, conventions, and through online vendors. No refund or credit of the sales or use tax paid is allowed for supplies which are not used by their expiration date and which are later destroyed or discarded.

### Tax Exempt

Drugs, excluding OTC drugs, which are dispensed under a prescription, and insulin purchased with or without a prescription, may be purchased sales tax exempt by physicians even if they are used by the physician in his or her practice.

Physicians are not required to remit use tax on sample drugs and supplies which are given to them free-of-charge.

Compounds or solutions which become ingredient or component parts of a prescribed drug, and which will be sold by the physician or pharmacist, may be purchased exempt from sales tax. However, compounds or solutions are taxable when they are merely used to prepare the prescribed drug, and do not actually become an ingredient or component part of the drug.

**Documentation Needed by the Physician to Make Tax-Exempt Purchases of Drugs and Insulin, Excluding OTC Drugs.** A [Nebraska Resale or Exempt Sale Certificate, Form 13](#), is not required for purchases of drugs, excluding OTC drugs. Instead, the physician is required to maintain records, separate from confidential patient records, showing that these products will be dispensed to patients.

Insulin does not require any additional documentation to exempt its purchase.

**Prosthetic Devices, Durable Medical Equipment, and Oxygen Equipment.** The exemption for prosthetic devices, durable medical equipment, and oxygen equipment is based on the **patient's** use of the product. Physicians may purchase prosthetic devices, durable medical equipment, oxygen equipment, and any repair or replacement parts and supplies used with these devices sales tax exempt when dispensed to the patient under circumstances that meet the following three-part test:

- 1 It is dispensed by the physician under a prescription;
- 2 It is only intended for use by a single patient; and
- 3 It is a type of product that is eligible for coverage under the Nebraska Medical Assistance Act (Medicaid).

Please refer to the Nebraska DHHS, Nebraska Medicaid Program, Provider Information, [Practitioner Fee Schedules](#) with the appropriate HCPCS code of the device or product to determine if the device or product is eligible for coverage.

**Example.** Implantable Neurostimulator, Pulse Generators, any type, is assigned code 000L8679. This code is not included in the table dated July 1, 2013 for Durable Medical Equipment, Medical Supplies, Orthotics and Prosthetics. The code is included in the table dated January 1, 2014. Therefore, the item is covered by Medicaid, but only for purchases made on and after January 1, 2014.

**Documentation Needed for Exemption Based on the Patient's Use.** The physician must present the vendors of these products with a completed and signed [Form 13](#). The physician must complete Section B, Category 2, and complete the description of the product, or products, and the intended use (i.e., prescribed for use as a prosthetic device).

## Use Tax

When the applicable sales tax has not been collected by the vendor, the physician is responsible for remitting the use tax. Use tax is paid directly to the Department. If the physician takes delivery of these items within the boundaries of a city or county that has a local sales and use tax, the local use tax must also be remitted.

The Nebraska and local use tax is remitted as follows:

- ❖ If you have a sales tax permit, the Nebraska and local use tax is reported on the appropriate use tax lines of your [Nebraska and Local Sales and Use Tax Return, Form 10](#).
- ❖ If you do not have a sales tax permit, the Nebraska and local use tax is reported on a [Nebraska and Local Business Use Tax Return, Form 2](#).

## Retail Sales

Products which will later be sold at retail may be purchased tax-exempt for resale. The physician must collect sales tax on the retail sales price, unless the sale qualifies for any of the exemptions listed below.

- ❖ Medical Records sold to the patient or to a person holding the patient's health care power of attorney as provided for under [Neb. Rev. Stat. §§ 30-3401 through 30-3432](#). A power of attorney for health care authorizes a designated person (for example, spouse, family member) to make essential health care decisions when the patient is incapable of doing so.
- ❖ Medical Records sold directly to the governmental unit administering Medicare or Medicaid, and to other exempt entities.
- ❖ Medical records directly paid for by an exempt governmental unit listed in [Nebraska Sales and Use Tax Reg-1-093, Governmental Units](#).
- ❖ Mobility enhancing equipment, and any repair and replacement parts for the equipment, purchased with a prescription.
- ❖ Prosthetic devices purchased with a prescription and of types that are eligible for coverage by Medicaid.
- ❖ Medical supplies, equipment, or records to one of the specific health care facilities listed in [Nebraska Sales and Use Tax Reg-1-090, Nonprofit Organizations](#), are sales tax exempt. For a list of exempt organizations, please see our Information Guide on [Nebraska Taxation of Nonprofit Organizations](#).

## Documentation for Tax-Exempt Purchases and Sales

**Documentation Needed for Tax-Exempt Sales for Resale.** The physician must give the vendors of these products a completed and signed [Form 13](#). The physician must complete Section A of the Form 13.

**Documentation Needed for Exemption Based on the Patient's Use.** The physician must present the vendors of these products with a completed and signed Form 13. The physician must complete Section B, Category 2, and complete the description of the product, or products, and the intended use (for example, prescribed for use as a prosthetic device).

### **Documentation Needed for Sales to Exempt Governmental Units and Medical Facilities.**

Physicians must obtain a properly completed Form 13, Section B, Category 3, from any sales tax-exempt governmental unit or nonprofit organization. The Form 13 must also include the exempt nonprofit organization's Nebraska exemption number (which begins with the prefix "05"). Governmental units are not issued Nebraska exemption numbers.

**Obtaining a Permit.** If you are making taxable retail sales, you must obtain a Nebraska Sales Tax Permit by completing a [Nebraska Tax Application, Form 20](#), and returning it to the Department. An [online application](#) is also available for new businesses to register for a sales tax permit.

**Release of Information.** The total amount charged for Release of Information (ROI) services is subject to tax when the copies are delivered to a location within Nebraska. ROI services are taxable when the customer obtains the paper copies or copies by other tangible means (e.g., CD, DVD, flashdrive). **Records which are faxed or sent electronically are not taxable.** The total amount subject to tax includes any staffing, postage, or handling fees included in the charge. ROI services, when acting as agents for a health care provider, must collect the sales tax on all taxable sales of copies of medical records for the health care provider. If the ROI service is not acting as an agent for the health care provider, the health care provider is responsible for collecting the sales tax. The health care provider may purchase the copies from the ROI service sales tax exempt, with a properly completed Form 13.

## General Tax Information

**Keeping Records For Tax Purposes.** While the Health Insurance Portability and Accountability Act (HIPAA) restrictions provide for privacy of individual patient health information, the Department has statutory authority to review physicians' accounting records for audit and other tax purposes. These records may include:

- ❖ General ledgers;
- ❖ Sales and purchase journals;
- ❖ Depreciation schedules and other tax records;
- ❖ Inventory files; and
- ❖ Invoices.

The physician is responsible for concealing any patient names which may be on these records even if the records contain one or more patient names. These records may include invoices and accounting records. These records must be kept for:

- ❖ Three years if filing a [Form 10](#) or [Form 2](#);
- ❖ Six years if no sales and use tax return was filed; or
- ❖ Any period for which an extension has been granted.

These records must include the accounting records ordinarily maintained by the physician and the schedules and working papers used to compute the tax liability.

To document any tax-exempt sales or purchases, you must keep the following:

- ❖ Sales and purchase invoices;
- ❖ Receipts;
- ❖ Medicaid and Medicare billing forms;
- ❖ Resale and exempt sale certificates; and
- ❖ Records substantiating that drugs, oxygen, and prosthetic devices were prescribed.

When a sale is made to refill a prescription, the records of the retailer must show the ID number of the original prescription.

### Tips:

- ❖ Keep adequate documentation for tax purposes to support claimed exemptions; and
- ❖ Keep exemption documents out of individual patient medical files, which cannot be reviewed by the Department.

In the case of audit or other Department review, these two tips will assist the Department's staff and help prevent the physician from paying unnecessary sales and use taxes due to missing or inaccessible records.

## Physicians Operating Medical Facilities

Purchases by for-profit medical facilities are subject to sales and use taxes in the same manner as purchases by physicians. Purchases by nonprofit medical facilities that do not have an exemption certificate issued by the Department are subject to sales and use taxes in the same manner as purchases by physicians. These for-profit and nonprofit medical facilities must maintain copies of documentation in the same manner as a physician.

## Private Insurance Companies

Items paid for by a private insurance company are not necessarily exempt from sales and use tax. Only those items that meet the requirements listed above are exempt from sales and use taxes, regardless of the method of payment.

## Resource List

### Information Guides

- ❖ [Nebraska Use Tax](#)
- ❖ [Nebraska and Local Sales Tax](#)
- ❖ [Instructions to Complete Form 10](#)
- ❖ [Nebraska Sales and Use Tax Guide for Dentists, Orthodontists, and Oral Surgeons](#)
- ❖ [Nebraska Taxation of Nonprofit Organizations](#)

### Nebraska Sales and Use Tax Regulations

- ❖ [Reg-1-023, Component Parts - Manufacturing, Processing, and Fabrication](#)
- ❖ [Reg-1-050, Medicines and Medical Equipment](#)
- ❖ [Reg-1-051, Physicians and Dentists](#)

### Nebraska Statutes

- ❖ [Neb. Rev. Stat. § 77-2704.09, Insulin; prescription drugs; mobility enhancing equipment; medical equipment; exemptions.](#)
- ❖ [Neb. Rev. Stat. § 77-2704.12, Nonprofit religious, service, educational, or medical organization; exemption; purchasing agents.](#)

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