

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

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 body;
- ❖ Are not food, food ingredients, dietary supplements, nor alcoholic beverages; **or**
- ❖ 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 qualified equipment.

Durable medical equipment does not include exercise equipment, recliners, vibrators, monitoring devices, or hot tubs. It also does not include equipment used by physicians in providing their professional services.

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 itself or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Over-the-Counter (OTC) Drugs. Drugs which 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 duly licensed practitioner under the Nebraska Uniform Credentialing Act for a drug or device for human use.

Prosthetic Devices. Prosthetic devices are a replacement, corrective, or supportive device 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 a prosthetic device eligible for tax exemption. Supplies **used by the patient** for the implanted device are also exempt from tax.

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

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 considered 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 the 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 items used in providing examinations, testing, or diagnosis and must pay the Nebraska and any applicable city or county (local option) sales tax to their vendors on all purchases and leases of these items. If the vendor does not collect the Nebraska and local option sales tax, the physician is responsible for paying the state and local consumer's use tax on the cost of the items directly to the Department. This includes purchases made at trade shows, conventions, and through on-line vendors.

Purchases of supplies and equipment, such as those listed below, are taxable.

Taxable purchases include, but are not limited to:

- ❖ Over-the counter drugs, even if they are prescribed;
- ❖ Supplies used by the physician;
 - Adhesive removers
 - Alcohol wipes
 - Bandages
 - Blood collection tubes
 - Catheters (which are not worn by the patient after a procedure is completed by a physician)
 - Curettes
 - Disposable gloves and exam table covers
 - Eye charts
 - Lab solutions
 - OTC medications, ointments, salves, and sprays
 - Slides
 - Syringes
 - Tongue depressors
 - Tubing
 - Uniforms, scrubs, shoe covers, and masks
 - Urine collection cups
 - X-ray film
- ❖ Equipment and instruments used by the physician;
 - Anesthesia machines
 - Audiology equipment
 - Beds, tables, and trays
 - Blood pressure equipment
 - Chair scales
 - Collection basins
 - Crash carts
 - Defibrillators
 - EKG equipment
 - Glucose meters
 - IV poles
 - Laboratory equipment
 - MRI/CT scanners
 - Maintenance, repair, calibration, and equipment certification services
 - Microscopes
 - Oxygen equipment
 - Parts for equipment
 - Programmable drug infusion pumps
 - Radiology equipment
 - Respiratory equipment
 - Stethoscopes and thermometers
 - Surgical equipment
 - Ultrasound and X-ray equipment
- ❖ Office and business equipment, non-medical supplies, and taxable services. Any delivery, shipping, and handling charges paid to the vendor of the item are also taxable.
 - Advertising or promotional items given away or donated
 - Building or office cleaning services
 - Computer hardware and software
 - Drug and information brochures
 - Envelopes, paper, and file folders
 - Magazine and journal subscriptions
 - Maintenance and service agreements
 - Office furniture
 - Paper and linen towels
 - Pest control services
 - Security services
 - Telephone communication services and equipment
 - Utilities

When property, such as tools and supplies for crash carts, are purchased for use by a physician's clinic, the purchases are subject to tax. If the items are not used by their expiration date, no refund or credit of the sales or use tax paid is allowed when the items are later destroyed or discarded.

Tax Exempt

Drugs, excluding over-the-counter drugs, which are dispensed under a prescription and insulin purchased with or without a prescription may be purchased tax exempt by physicians.

Physicians are not required to remit consumer's 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 Over-the-Counter Drugs. A [Nebraska Resale or Exempt Sale Certificate, Form 13](#), is not required for purchases of drugs, excluding over-the-counter drugs. Instead, the physician is required to maintain records, separate from confidential patient records, showing that these products are to be dispensed to patients.

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

Prosthetic Devices and Oxygen Equipment. The exemption for prosthetic devices and oxygen equipment is based on the **patient's** use of the product. Physicians may purchase prosthetic devices and oxygen equipment tax exempt when the product meets 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 NDHHS, 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.

The Web address of the Practitioner Fee Schedules is:

http://dhhs.ne.gov/medicaid/Pages/med_practitioner_fee_schedule.aspx.

❖ Examples of Prosthetic Devices include:

- Ambulatory surgical boots
- Anti-embolism stockings
- Artificial limbs
- Burn garments (pressure)
- Cast materials
- Cervical collars
- Cochlear devices
- Concentrators
- Full sole and heel wedges, between sole
- Implanted maxillofacial devices
- Insulin pumps
- Prescription eyeglasses and hearing instruments

❖ Examples of Oxygen Equipment include:

- Oxygen, cylinders, concentrators, and transport devices
- Oxygen cylinder transport devices (i.e., sheaths and carts)
- Oxygen fittings and accessories
- Oxygen flowmeters
- Oxygen humidifiers
- Oxygen regulators
- Oxygen tank wrenches
- Oxygen tubing and facemasks

Documentation Needed for Exemption Based on the Patient's Use. The physician must present the vendors of these products with a completed and signed [Nebraska Resale or Exempt Sale Certificate, 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).

CONSUMER'S USE TAX

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

The Nebraska and local option consumer's use tax is remitted as follows:

- ❖ If you have a sales tax permit, the Nebraska and local consumer's use tax is reported on the appropriate consumer's 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 consumer's use tax is reported on a [Nebraska and Local Consumer's Use Tax Return, Form 2](#).

RETAIL SALES

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

- ❖ Medical Records, in tangible form, such as paper or CD, 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 attorney-in-fact (e.g., spouse, family member) to make essential health care decisions when the patient is incapable of doing so.
- ❖ Medical Records sold directly to the government unit administering Medicare or Medicaid, and to other exempt entities.

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.

- ❖ Medical records directly paid for by an exempt governmental unit listed in [Neb. Sales and Use Tax Reg. 1-093](#).
- ❖ Mobility enhancing equipment purchased with a prescription. Mobility enhancing equipment includes, but is not limited to:

- Accessories which could have been included in the list price of the equipment at the time of purchase
- Bath aids, i.e., raised toilet seats or tub and shower stools
- Bath and stairway lifts
- Bed pull-up Ts, including trapeze bars attached to a bed
- Power wheelchairs
- Repair or replacement parts for qualified mobility enhancing equipment
- Specialty wheelchairs
- Swivel seats

- ❖ Prosthetic devices:

- Artificial limbs
- Cervical collars
- Cochlear devices
- Compression burn garments
- Gradient compression stockings, gloves, and sleeves
- Hearing instruments, monaural or bilateral
- Insulin pumps
- Materials and supplies to make casts
- Negative pressure ventilators
- Neoprene heel and sole lifts, for elevation
- Neuromuscular stimulators
- Ostomy bags, pouches, tubes, vents, skin barriers, belts, and stoma caps
- Pacemakers
- Prescription eyeglasses or contact lens
- Repair or replacements parts for qualified prosthetic devices
- Shunts and stents
- Supplies used by the patient with the prosthetic device
- Surgical boots/shoes
- Thoracic rib belts
- Torso, upper and lower extremity orthosis
- Trusses

- ❖ **Sales to Exempt Medical Facilities** of medical supplies, equipment, or records to one of the specific health care facilities listed in [Nebraska Sales and Use Tax Reg. 1-090](#) are sales tax exempt. For a list of exempt organizations, please see our Information Guide on [Nebraska Taxation of Nonprofit Organizations](#).
- **Documentation Needed for Tax Exempt Purchases for Resale.** The physician must give the vendors of these products a completed and signed [Nebraska Resale or Exempt Sale Certificate, 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 (i.e., 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 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 retail sales, a Nebraska Sales Tax Permit is obtained by completing a [Nebraska Tax Application, Form 20](#), and returning it to the Department.

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. These records may include invoices and accounting records, even if the records contain one or more patients' names. These records must be kept for:

- ❖ Three years if filing a [Nebraska Sales and Use Tax Return, Form 10](#), or [Nebraska and Local Consumer's Use Tax Return, Form 2](#);
- ❖ Five years if no sales and use tax return was filed; or
- ❖ Any statutorily extended period.

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 the prescription of drugs, oxygen, and prosthetic devices.

When a sale is made to refill a prescription, the records of the retailer must show the identification 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 tax 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 tax in the same manner as purchases by physicians. The 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 the sales and use tax, regardless of the method of payment.

RESOURCE LIST

- ❖ [Nebraska Consumer's Use Tax Information Guide](#)
- ❖ [Nebraska and Local Sales Tax Information Guide](#)
- ❖ [Instructions to Complete Form 10 Information Guide](#)
- ❖ [Nebraska Sales and Use Tax Guide for Dentists, Orthodontists, and Oral Surgeons](#)
- ❖ [Nebraska Taxation of Nonprofit Organizations Information Guide](#)
- ❖ [Neb. Rev. Stat. 77-2704.09](#)
- ❖ [Neb. Rev. Stat. 77-2704.12](#)
- ❖ [Neb. Sales and Use Tax Reg. 1-023](#)
- ❖ [Neb. Sales and Use Tax Reg. 1-050](#)
- ❖ [Neb. Sales and Use Tax Reg. 1-051](#)

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