

SUMMARY OF PROPOSAL #33
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: Sales Tax Exemption on Sale of a Durable Medical Equipment

Summary of Proposal for Consideration

To repeal the sales tax exemption for sales, rentals, or repair of durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies when the items are prescribed by a physician prior to purchase under Arkansas Code § 26-52-433, effective for tax years beginning on or after January 1, 2019.

Fiscal Analysis

Repeal of the exemption may result in an estimated \$7,400,321 per year increase to General Revenue based upon FY11, as provided by the Department of Finance and Administration's "Sales and Use Tax Revenue Impact of Exemptions" presentation to the Arkansas Tax Reform and Relief Legislative Task Force on March 19, 2018.

Legal Analysis

Background

Arkansas currently has a sales tax exemption on the sales, rentals, or repair of durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies when the items are prescribed by a physician prior to purchase.

ACT 414 of 1991 created the sales tax exemption for sales, rentals, or repair of durable medical equipment, mobility-enhancing equipment, prosthetic devices, and disposable medical supplies when the items are prescribed by a physician prior to purchase, and has not been amended since.

Potential Legal Issues

Exempted items must satisfy the definitions of "durable medical equipment" under the Streamlined Sales and Use Tax Agreement (SSUTA). Arkansas is a member of the SSUTA.

The federal rules for administering the Medicare program contemplate the payment of state sales taxes on sales covered by the Medicare Program. Under § 2122.1 of Part 1 of the Medicare Providers Reimbursement Manual, the general rule is that taxes assessed against the healthcare provider are allowable costs to the extent that the taxes are actually incurred and related to the care of beneficiaries. However, § 2122.2 states that certain taxes, including sales taxes levied against the patient and collected and remitted by the provider, are not allowable, or reimbursable, costs under the Medicare Program.

Other States

- Iowa: Sales tax exemption on sales of durable medical equipment, including prosthetic devices and disposable medical supplies when the items are prescribed by a physician prior to purchase. (IA St. § 423.3)

- Iowa is a member of the SSUTA
- Louisiana: Sales tax exemption on sales of any and all medical devices used exclusively by the patient in the medical treatment of various diseases or administered exclusively to the patient by a physician, nurse, or other health care professional or health care facility in the medical treatment of various diseases under the supervision of and prescribed by a licensed physician. (LA St. § 47:305).
 - Louisiana is not a member of the SSUTA
- Mississippi: Sales tax exemption on sales of home medical equipment and home medical supplies listed as eligible for payment under Title XVIII of the Social Security Act or under the state plan for medical assistance under Title XIX of the Social Security Act, prosthetics, orthotics, hearing aids, hearing devices, prescription eyeglasses, oxygen and oxygen equipment, when ordered or prescribed by a licensed physician for medical purposes of a patient, and when payment for such equipment or supplies, or both, is made in part or in total under the provisions of the Medicare or Medicaid program. This exemption applies to the total sales price of such equipment or supplies. (MS. St. § 27-65-105).
 - Mississippi is not a member of the SSUTA
- Missouri: Sales tax exemption on sales, rentals, repairs, and parts of durable medical equipment, prosthetic devices, and orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items. (MO St. § 144.030)
 - Missouri is not a member of the SSUTA
- Oklahoma: Sales tax exemption on sales of durable medical equipment when the items are prescribed by a physician prior to purchase. (OK St. 68 § 1357.6)
 - Oklahoma is a member of the SSUTA
- Tennessee: Sales tax exemption on durable medical equipment for home use sold with a prescription for human use. Items generally understood and intended to be used in the patient's home are exempt. (TN St. § 67-6-314)
 - Tennessee is an advisory member of the SSUTA
- Texas: Sales tax exemption on durable medical equipment when the items are prescribed by a physician prior to purchase. (TX St. § 151.313)
 - Texas is not a member of the SSUTA