

**CERTIFIED MAIL, RETURN RECEIPT**

January 31, 2008

Jerome D. Gerard, Acting Executive Director  
Maine Revenue Service  
24 State House Station  
Augusta, ME 04333-0024

Dear Mr. Gerard,

The New England Medical Equipment Dealers Association (NEMED) respectfully requests clarification on questions being received by our office with regard to recent audits of DME providers. NEMED is the regional trade association that represents durable medical equipment, medical supply, oxygen, custom rehab and assistive technology and home infusion therapy companies in New England. Our members provide products and services to approximately 85% of the Medicaid beneficiaries in Maine.

It appears that the same issues that arose from previous audits of DME providers in the early 1990's still exist. Our members have been trying to obtain clarification to no avail. In order to ensure that our members are in compliance with the sales and use tax law in Maine, please respond to the following:

1. Please provide a comprehensive description of *durable medical equipment*.
2. Please provide a detailed list of items that are exempt and items that are not exempt.
3. Sales tax questions
  - a. There is conflicting information regarding sales tax and rental equipment. Our members supply a large amount of equipment through Medicare on a 13-month capped lease purchase program that began January 1, 2006. This equipment is delivered and ends up being kept by the consumer for the entire 13 months at which time title is transferred to the patient and it becomes their property. All of this equipment is prescribed by a physician, and Medicare, as a primary payer, does not pay sales tax. What part, if any, of this type of transaction is subject to sales tax, and where is this clearly stated in Maine Sales tax law.
  - b. Auditors have told providers that they are required to pay the sales tax if they are unable to collect it from the patient, even though they have paid the use tax. Examples: patient has Medicare/Medicaid/private insurance (patient cannot be charged more than the contract allows) or the patient has died. Is this accurate?
  - c. Clarification is needed on whether or not wheelchairs are subject to the "use" tax. One of the auditors told a provider that wheelchairs are a non-taxable item and providers do not have to pay "use" tax on that item. However, the provider's accountant believes it is taxable.
    - i. Additionally, an auditor told a provider that if they paid the "use" tax for the wheelchairs, they could submit a request for a refund. Please verify.

Mr. Jerome Gerard

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The current law, as it is written, has lead to various interpretations and confusion. Your response to these questions will help our members remain compliant with the law.

If you have any questions, please call me at 508-993-0700 or Jim Greatorex (Black Bear Medical) at 207-871-0008.

Sincerely,

Karyn Estrella  
Executive Director

cc: Mr. Scott Paquet, Principal Revenue Agent  
Ms. Beth Couillard, Revenue Agent  
Members of the Joint standing committee on taxation