

December 6, 1999

Sales and Use Tax - Mobility Enhancing Equipment for Use in a Home. MOBILITY ENHANCING EQUIPMENT FOR USE IN A HOME PURCHASED PURSUANT TO A PRESCRIPTION ISSUED BY A NEBRASKA-LICENSED PHYSICIAN IS EXEMPT FROM SALES AND USE TAX.

Advice has been requested as to whether the purchase of mobility enhancing equipment on and after October 1, 1999, for use in a home (private residence) is subject to sales and use tax.

Mobility enhancing equipment for use in a private residence is equipment that enables a disabled or handicapped person to enter, exit, or move from one place to another place in his or her private residence. Mobility enhancing equipment for use in a private residence includes items such as ramps, railings, stair lifts, patient lifts, and elevators.

Mobility enhancing equipment does not include homewaiters (dumbwaiters) and elevators that are generally useful in the absence of illness, physical injury or physical incapacity. In addition, telephones, computers, intercoms, and other similar items that do not improve the mobility of a disabled or handicapped person cannot qualify for the exemption.

Pursuant to Nebraska Revised Statute section 77-2704.09, mobility enhancing equipment purchased by any disabled or handicapped person who is required to use durable medical equipment, orthotics, or prosthetics for locomotion and which is purchased pursuant to a prescription issued by a Nebraska licensed physician is exempt from sales and use tax when the following procedures are followed. (Mobility enhancing equipment that is purchased for use in a private residence to meet the needs of a dependent who could have purchased the mobility enhancing equipment themselves is also exempt. A dependent is generally a family member and may include a parent, spouse, son, or daughter.)

The purchaser of the mobility enhancing equipment must give a Nebraska Resale or Exempt Sale Certificate, Form 13, and a copy of the prescription to the retailer to exempt the retail sale from sales tax.

Contractors operating under Option 1 are acting as retailers and collect sales tax from their customers. Option 1 contractors may accept a Form 13 and a copy of the prescription issued by a Nebraska-licensed physician to exempt the equipment or materials from sales tax.

Contractors operating under Option 2 or Option 3 are the consumers of all mobility enhancing equipment or materials used to construct mobility enhancing equipment that are purchased and annexed to real estate. Option 2 and Option 3 contractors must pay tax on such equipment and materials and do not collect sales tax from their customers. Option 2 and Option 3 contractors cannot accept a Form 13 and prescription from their customer to exempt the equipment or materials from tax.

All contractors who make over-the-counter retail sales of mobility enhancing equipment that is not annexed to real estate by them are required to collect sales tax on the retail selling price of

the equipment unless the purchaser provides a Form 13 and a copy of the prescription issued by a Nebraska-licensed physician.

Disabled or handicapped persons who purchase materials to build a ramp or other mobility enhancing equipment that will be used by them or a dependent to make their private residence accessible are required to pay sales tax on the materials. The purchaser can then file a Claim for Overpayment of Sales and Use Tax, Form 7, with documentation, including a copy of the Nebraska-licensed physician's prescription, to support the amount of the refund claimed.

The purchase of a warranty or service contract for mobility enhancing equipment annexed to real estate is not taxable. Persons repairing mobility enhancing equipment annexed to real estate are contractors. As contractors, they are required to pay sales tax or remit use tax on all parts and materials used to replace or repair the equipment covered under a warranty or service and maintenance agreement, regardless of the contractor option under which they are operating.

The purchase of a warranty or service contract to cover mobility enhancing equipment that is not annexed to real estate is taxable unless the purchaser gives to the seller a Nebraska Resale or Exempt Sale Certificate, Form 13, and a copy of the prescription issued by a Nebraska-licensed physician.

Repair and maintenance parts for mobility enhancing equipment that is not annexed to real estate, but is used in a private residence, are exempt from tax provided the owner of the equipment gives to the repairperson a completed Form 13, Section B, and a copy of the prescription issued by a Nebraska-licensed physician.

Any disabled or handicapped person who pays sales tax on the purchase of mobility enhancing equipment on or after October 1, 1999, for use in a private residence may file a Claim for Overpayment of Sales and Use Tax, Form 7, with the Nebraska Department of Revenue. Documentation, including a copy of the Nebraska-licensed physician's prescription must be filed with the claim.

Mobility enhancing equipment that is purchased by a nursing home, hospital, or other organization is not exempt from sales and use tax unless the organization itself is exempt from sales and use tax and holds a valid certificate of exemption issued by the Nebraska Department of Revenue.

APPROVED:



Mary Jane Egr  
State Tax Commissioner

December 6, 1999