OKLAHOMA TAX COMMISSION

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OFFICE OF THE GENERAL COUNSEL

April 16, 2015

Via U.S. Mail

Re: Request for Letter Ruling from Office of the General Counsel File No. LR-14-018

Dear

This is in response to your letter to the Tax Policy and Research Division of the Oklahoma Tax Commission in which you request a letter ruling on behalf of your client, as to whether the retail sale of Therapy is exempt from sales and use tax in Oklahoma pursuant to 68 O.S. § 1357, or in the alternative, 68 O.S. § 1357.6. The Tax Policy and Research Division forwarded your request to the Office of the General Counsel for review. The basic facts presented in your request—taken directly from your letter—are as follows:

> is a commercial-stage oncology company dedicated to the development and commercialization of tumor treating fields. therapy is for the treatment of cancer patients with solid tumors. therapy is a low-toxicity treatment that uses low-intensity; alternating electric fields to exert physical forces on the electrically charged components of dividing cancer cells, which is intended to disrupt cell division and cause cancer cell death.
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> developed the Therapy to treat solid tumors of the head. The treatment works by producing alternating electrical fields within the human body that are believed to disrupt the rapid cell division exhibited by cancer cells. The alternating electrical fields are applied to the brain through electrodes placed on the scalp.
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> * * *

The therapy is designed for continuous use throughout the day – the patient is able to maintain a normal daily routine while treating the disease.

- The therapy delivers non-invasive alternating electric fields through insulated arrays' that are attached to the mechanism and placed directly on the skin in the region surrounding the tumor. Typically the arrays are removed and replaced two or three times per week. The arrays are replaced to ensure sufficient contact with the patient's skin.
- The components of the therapy are small, weighing six pounds, and are powered by a rechargeable battery in a bag that is carried by the patient so they maintain mobility.
- The system can be plugged in while the patent [sic] is stationary.
- Patients pay a monthly fee for the therapy which is broken down into a charge for the durable components and a monthly fee to purchase transducer arrays.
- Around the clock technical support is included in the fees.

* * *

To obtain the therapy, certified physicians write a prescription for the patient and submit the prescription to shipping facility location in New Hampshire. The prescription is filled and the components of the therapy are shipped to the closest local technical support staff specialist or to the certified physician's office.

* * *

The day the patient starts treatment, the local technical support staff delivers the components of the therapy to the patient, they train and educate the patient on the proper way to administer the treatment and the technical aspects of the therapy. The patient is provided with a user manual and technical support phone number. The patient then receives additional training, guidance and treatment initiation from their physician. The on-going care of the patient and the medical assessments are conducted by the treating physician. All medical questions are referred to the treating physician.

* * *

Issue: Whether the retail sale of Therapy is exempt from sales and use tax.

The sale of tangible personal property in Oklahoma is subject to the levy of sales tax unless specifically exempted by the provisions of the Oklahoma Sales Tax Code. 68 O.S. Supp. 2013, § 1354(A)(1).[1] The Oklahoma Sales Tax Code does not contain a blanket exemption for the sale of medical devices such as However, in certain instances, sales of prosthetic devices may be exempt from sales and use tax.

"Prosthetic device" is defined in Section 1357.6(C) of Title 68 as follows:

> The term "prosthetic device" means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:
>
> (1) Artificially replace a missing portion of the body;
> (2) Prevent or correct physical deformity or malfunction; or
> (3) Support a weak or deformed portion of the body.
>
> Provided, the term shall not include corrective eyeglasses, contact lenses or hearing aids.

68 O.S. 2011, § 1357.6(C); *see also* 68 O.S. Supp. 2014, § 1357(22) ("For purposes of this paragraph [§ 1357(22)], 'prosthetic device' shall have the same meaning as provided in Section 1357.6 of this title. . . .").

Because the is a device worn on the body to prevent or correct a physical deformity or malfunction—the division of cancer cells in the brain—it is the opinion of the Office of the General Counsel that the constitutes a prosthetic device pursuant to Sections 1357(22) and 1357.6(C).

"Sales of prosthetic devices to an *individual* for use by such *individual*" are exempt from sales tax. 68 O.S. Supp. 2014, § 1357(22) (emphasis added). Therefore, it is the opinion of the Office of the General Counsel that sales of to *individuals* for use by such *individuals* are exempt from sales tax.

Attached are copies of the above-referenced Oklahoma statutes.

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[1] Oklahoma imposes an excise tax on the purchase price of tangible personal property purchased outside the state or brought into the state for storage, use, or consumption. 68 O.S. 2011, § 1402. Tangible personal property purchased outside the state or brought into the state is exempt from use tax if the purchase of the tangible personal property would be exempt from sales tax under the Oklahoma Sales Tax Code. 68 O.S. 2011, § 1404(4). Thus, this Letter Ruling's analysis regarding sales tax applies equally to your inquiry regarding the imposition of use tax.

This response applies only to the circumstances discussed in your written request of June 17, 2014. Pursuant to OKLA. ADMIN. CODE § 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and there has been no change in applicable law. Furthermore, this letter ruling does not preclude the Commission from conducting an audit or examination under 68 O.S. § 206 of any report or transaction outlined in this Letter Ruling.

Respectfully,

OKLAHOMA TAX COMMISSION

Linda Samuel-Jaha
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APPROVED:

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