OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

PHONE
(405) 319-8550

PHYSICAL ADDRESS
First National Center
120 North Robinson, 20th Floor
Oklahoma City, OK

FACSIMILE
(405) 601-7144

MAILING ADDRESS
First National Center
120 North Robinson, Suite 2000W
Oklahoma City, Oklahoma 73102-7801

OFFICE OF THE GENERAL COUNSEL

April 8, 2008

RE: Letter Ruling – , Inc.
Our File No.: LR-07-028

Dear :

By letter dated January 31, 2008, you requested a letter ruling on behalf of your client, , Inc. (" regarding the sales and use tax implications for sales of in Oklahoma.[1] A Letter Ruling from the Office of General Counsel, Oklahoma Tax Commission, is an "informal written statement of policy or treatment of specific fact situations under Oklahoma law." *OAC* 710:1-3-73(e).

This Letter Ruling addresses the following specific **issue**:

> Whether sales of by prescription in Oklahoma qualify for exemption from sales tax as "sales of drugs sold pursuant to a prescription written for the treatment of human beings by a person licensed to prescribe the drugs...." 68 O.S. § 1357(9).

You assert the following **facts** in your request for this letter ruling:

1. is a substance administered by injection that contains 20% non-resorbable polymethylmethacrylate microspheres, 30 to 50 microns in diameter, and 80% purified bovine collagen gel, with 0.3% lidocaine hydrochloride, an anesthetic. Lidocaine hydrochloride is a drug listed in the United States Pharmacopoeia.

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[1] Letter from , Partner, Gallina LLC, to , Assistant General Counsel, Oklahoma Tax Commission (Jan. 31, 2008) (on file with the Office of General Counsel, Oklahoma Tax Commission).

2. is approved by the United States Food and Drug Administration as a non-surgical, physician-administered injection for the permanent treatment of moderate to severe facial wrinkles.

3. permanently affects the structure and function of the skin at the injection site. The microspheres contained in the injection become permanently embedded in the skin providing a structure to support the wrinkle and help prevent further wrinkling.

4. is sold pursuant to a prescription written for the treatment of human beings by a person licensed to prescribe the drugs under Okla. Stat. 68 O.S. § 1357(9). is only available to patients by prescription. is only administered by state-licensed and company-trained physicians, dermatologists, plastic surgeons, and other surgeons.

The following **analysis** relies on the facts you present. The Oklahoma Sales Tax Code (68 O.S. § 1350 *et seq.*) imposes "a tax upon the sale of tangible personal property and services, ***not otherwise exempted***, to the consumer." 68 O.S. § 1351 (Emphasis added). A 'sale' is "the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state...." 68 O.S. § 1352(15).

"Sales of ***drugs*** sold pursuant to a prescription written for the treatment of human beings by a person licensed to prescribe the drugs..." ***are exempted*** specifically from the tax levied by the Oklahoma Sales Tax Code. 68 O.S. § 1357 (9) (Emphasis added). OKLA. STAT. tit. 68, § 1352(8) defines the term 'drug' as follows:

> "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation:
>
> a. recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them,
> b. intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, or
> c. intended to affect the structure or any function of the body.

To the extent a tax is not paid on the transfer of title or possession of tangible personal property in this state, the Oklahoma Use Tax Code (68 O.S. § 1401 *et seq.*) levies an excise tax on the storage, use or other consumption of the property. 68 O.S. § 1402. However, tangible personal property that is specifically exempted from the

Oklahoma Sales Tax Code (68 O.S. § 1350 *et seq.*) is exempt from the provisions of 68 O.S. § 1401 *et seq.* 68 O.S. § 1404 (4).

In **conclusion**, since is a substance or preparation that contains components intended to affect the structure or any function of the body, qualifies as a 'drug'. 68 O.S. § 1352(8). And since is sold pursuant to a prescription written for the treatment of human beings by a person licensed to prescribe the drug, sales of qualify for the exemption from the provisions of the Oklahoma Sales Tax Code (68 O.S. § 1350 *et seq.*) provided by 68 O.S. § 1357(9). The use of qualifies for exemption from the provisions of the Oklahoma Use Tax Code (68 O.S. § 1401 *et seq.*) provided by 68 O.S. § 1404(4).

This "Letter Ruling" generally may be relied upon *only* by the taxpayer to whom it is issued, provided that all facts have been accurately and completely stated, and there has been no change in applicable law.

Respectfully submitted,

Assistant General Counsel

APPROVED IN CONFERENCE:

General Counsel

Assistant General Counsel
Opinion Conference Coordinator