

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

August 01, 2011

RE: LR-11-028 (Sales Tax Inquiry)

Dear [REDACTED]

This is in response to your request regarding the sales tax treatment of certain medical gases.

Although not specifically addressing the questions posed in your correspondence of February 17, 2011, please be advised that sales of drugs¹ sold pursuant to a prescription written for the treatment of human beings by a person licensed to prescribe the drugs are exempt from the levy of sales tax in Oklahoma. 68 O.S. § 1357(9). This exemption does not apply to sales of over-the-counter drugs².

Medical grade nitrous oxide, oxygen, air, carbon dioxide, helium, and nitrogen meet the definition of drug set forth in Section 1352(8) of Title 68 of the Oklahoma Statutes for purposes of the sales tax exemption found in 68 O.S. § 1357(9).

Health care providers engaged in the administration of drugs to their patients may purchase the enumerated medical gases exempt from sales tax if holding a valid sales tax permit. OAC 710:65-142.

¹ Pursuant to Section 1352(8) of Title 68, drug means a compound, substance or preparation, and any component of a compound, substance or preparation:

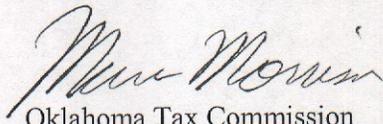
- a. recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them,
- b. intended of use in the diagnosis, cure, mitigation, treatment, or prevention of disease, or
- c. intended to affect the structure of any function of the body.

² Over-the-counter drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R., Section 201.66. The over-the-counter-drug label includes:

- a. a Drug Facts' panel, or
- b. a statement of the "active ingredients(s)" with a list of those ingredients contained in the compound, substance or preparation. 68 O.S. § 1352(17).

This response applies only to the circumstances discussed in your written request of February 17, 2011. Pursuant to Commission Rule 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.

Sincerely,

A handwritten signature in cursive script that reads "Marc Morrison". The signature is written in dark ink and is positioned above the typed name and title.

Oklahoma Tax Commission
Marc Morrison
Tax Policy & Research Division