OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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September 15, 2011

RE: LR-11-092 (Sales Tax Inquiry)

Dear

This is in response to your request regarding the sales tax treatment of sales of certain medical gases. Set forth verbatim are the facts presented along with the response thereto.

Facts:

> We would like to request a letter ruling on the sales tax exemption of medical gases as claimed in the attached letter we received from Please see all documentation attached to the Letter. They are claiming that the following gases that they purchase from our company are exempt from sales tax per OK Rule Section 710:65-13-179.
>
> Oxygen
> Nitrogen (National Formulary)
> Nitric Oxide
> Nitrous Oxide USP
> Carbon Dioxide USP
> Helium USP
> Medical Air USP
> And any mixture of these gases or the gas products approved under a new drug application (NDA)
>
> If they are in fact exempt for the reasons they have claimed, please confirm or provide a clear response for denial as we have had much confusion over this issue for medical facilities.

Response:

Please be advised that sales of drugs[1] 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 drugs[2].

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).

Further, should nitric oxide, mixtures of the above-referenced gases, or new gas products meet the definition of drug in Section 1352(8) of Title 68 and the conditions of Section 1357(9) of Title 68 are otherwise met, purchases thereof would be exempt from sales tax in Oklahoma.

This response applies only to the circumstances discussed in your written request of August 03, 2011. Pursuant to Oklahoma Administrative 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.

Sincerely,

Oklahoma Tax Commission

Marc Morrison
Tax Policy Analyst

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[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 office 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).