

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 08-47**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the Tennessee sales and use tax to the sale of medical oxygen.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[TAXPAYER] is a distributor of [MEDICAL OXYGEN], and related equipment and supplies. The Taxpayer sells medical oxygen for human use to hospitals, clinics, surgical centers,

physicians, nursing homes, home health care providers, and other similar businesses and organizations.

The Taxpayer's sales of medical oxygen to its customers are not made pursuant to a prescription at the time of the sale. Additionally, at the time of the Taxpayer's sale, the medical oxygen has not been specifically prescribed for an individual's use. However, the medical oxygen that is sold to hospitals, clinics, surgical centers, physicians, nursing homes, home health care providers, and similar customers will ultimately be dispensed to patients pursuant to a prescription.

QUESTIONS

1. Are the Taxpayer's sales of medical oxygen to for-profit hospitals, clinics, surgical centers, physicians, nursing homes, home health providers, and similar businesses and organizations exempted from the Tennessee sales and use tax pursuant to Tenn. Code Ann. § 67-6-320(b)(2) (Supp. 2007)?
2. If the answer to Question #1 is negative, do any other Tennessee sales and use tax exemptions apply to the Taxpayer's sales of medical oxygen?
3. If the answer to question number one is "yes," what support must Taxpayer obtain from these customers, and maintain, in order to substantiate the sales and use tax exemption upon audit?

RULINGS

1. Yes. The sale of medical oxygen is exempt from the Tennessee sales and use tax, provided that the product is dispensed pursuant to a prescription and is for human use.
2. Not applicable.
3. The Taxpayer must comply with the general documentation requirements set forth under Tenn. Code Ann. § 67-6-523 (2006). Because the exemption for medical oxygen is a product exemption that does not depend on the status of the purchaser, the documentation requirements with respect to purchasers claiming exemption from taxation, found under Tenn. Code Ann. § 67-6-409(a) (Supp. 2007), are not applicable.

ANALYSIS

Under the Retailers' Sales Tax Act, Tenn. Code Ann. § 67-6-101 *et seq.*, the sale of tangible personal property, which includes medical oxygen, is generally subject to sales and use tax. The sale of an item of tangible personal property is exempt for purposes of the Tennessee sales and use tax only if the sale comes within the scope of a statutory exemption.

Note that the burden is on the taxpayer to establish entitlement to an exemption from taxation. The Tennessee Supreme Court has stated that "[a]lthough the rule is well-established that taxing legislation should be liberally construed in favor of the taxpayer and strictly construed against the taxing authority, it is an equally important principle of Tennessee tax law that 'exemptions

from taxation are construed against the taxpayer who must shoulder the heavy and exacting burden of proving the exemption.” *American Airlines, Inc. v. Johnson*, 56 S.W.3d 502, 506 (Tenn.Ct.App. 2000) (quoting *Rogers Group, Inc. v. Huddleston*, 900 S.W.2d 34, 36 (Tenn.Ct.App. 1995)). The Tennessee Supreme Court has also stated that the burden is on the taxpayer to establish the exemption, and any well-founded doubt is sufficient to defeat a claimed exemption from taxation. *American Airlines*, 56 S.W.3d at 506 (citing *Tibbals Flooring Co. v. Huddleston*, 891 S.W.2d 196, 198 (Tenn. 1994); *United Cannery, Inc. v. King*, 696 S.W.2d 525, 527 (Tenn. 1985)).

1. Exempt sales of medical oxygen

The sale of medical oxygen is exempt for purposes of the Tennessee sales and use tax pursuant to Tenn. Code Ann. § 67-6-320(b)(2) (Supp. 2007) if it is sold for human use and dispensed pursuant to a prescription.

Tenn. Code Ann. § 67-6-320(b) exempts from the Tennessee sales and use tax “the sale or use of . . . [m]edical oxygen for human use dispensed pursuant to a prescription.” Tenn. Code Ann. § 67-6-102(59) (Supp. 2007) defines the term “prescription” as an “order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws” of Tennessee. The definition of the term “prescription” includes orders written on a patient’s chart by a duly licensed practitioner.¹

Accordingly, to come within the exemption under Tenn. Code Ann. § 67-6-320(b)(2), medical oxygen must be: 1) sold for human use, and 2) dispensed pursuant to a prescription.

The Taxpayer’s sale of medical oxygen meets the first requirement because it is sold for human use. The sale of medical oxygen also meets the second requirement because it is dispensed pursuant to a prescription. Tenn. Code Ann. § 67-6-320(b) requires that medical oxygen be *dispensed* pursuant to a prescription to come within the exemption; it does not require that the oxygen be sold pursuant to a prescription. In the Taxpayer’s case, the medical oxygen that is sold to hospitals, clinics, surgical centers, physicians, nursing homes, home health care providers, and similar customers is ultimately dispensed pursuant to a prescription. Therefore, the Taxpayer’s sale of medical oxygen also meets the second requirement. As a result, the Taxpayer’s sale of medical oxygen is exempt from the Tennessee sales and use tax.

2. Other exemptions

Because the Taxpayer’s sales of medical oxygen are exempt from the Tennessee sales and use tax under Tenn. Code Ann. § 67-6-320(b)(2) (Supp. 2007), it is unnecessary to address the applicability of other sales and use tax exemptions.

3. Documentation requirements

¹ See Tennessee Department of Revenue Important Notice #07-22 (December 2007) for further information. The Notice is available on the Department’s website at <http://state.tn.us/revenue/notices/sales/sales07-22.pdf>.

The Taxpayer must comply with the general documentation requirements set forth under Tenn. Code Ann. § 67-6-523 (2006). Because the exemption for medical oxygen is a product exemption that does not depend on the status of the purchaser, the documentation requirements with respect to purchasers claiming exemption from taxation, found under Tenn. Code Ann. § 67-6-409(a) (Supp. 2007), are not applicable to the Taxpayer's sale of medical oxygen.²

Tenn. Code Ann. § 67-6-523 generally requires all taxpayers to establish and maintain records that are adequate for auditors to use in determining the correct amount of the taxpayer's tax liability. The Taxpayer should therefore keep records of its sales, including copies of invoices and purchase orders. Records of business transactions must be retained for a minimum of three years from December 31 of the year in which the associated Tennessee sales and use tax return was filed.

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APPROVED: Reagan Farr
Commissioner of Revenue

DATE: 8/18/08

² Tenn. Code Ann. § 67-6-409(a)(2) (Supp. 2007) generally requires a seller to obtain a copy of the purchaser's authorization for exemption. The exemption certificate contains the information required under Tenn. Code Ann. § 67-6-409(a)(1), including: the purchaser's name, address, type of business, reason for exemption, and a tax identification number issued by Tennessee or another governmental authority. Note as well that the Taxpayer is not required to obtain copies of prescriptions for medical oxygen; such prescriptions will be unavailable at the time of the sale because the Taxpayer's customers will dispense the product at a later date.