



STATE BOARD OF EQUALIZATION

September 8, 1967

Gentlemen:

It has been brought to our attention by State Senator George Deukmejian that confusion exists concerning the conditions under which sales of oxygen for medical purposes are subject to sales tax and the conditions under which they are exempt. Whether such sales are exempt depends on whether the oxygen is sold for use as a "medicine", and whether it can be regarded as "furnished by a licensed physician ... to his own patient for treatment of the patient ..."

As indicated in paragraph (b) of Section 635', "medicines" mean and include any substance intended for use by application to the human body in the diagnosis, care, mitigation, treatment, or prevention of disease. This definition of "medicines" has been interpreted by this Board as including oxygen sold to an individual for use in treating a human being pursuant to a doctor's prescription.

Misunderstanding regarding the application of tax to sales of oxygen for medical use may have arisen because of an annotation of a sales tax counsel ruling which appears in the Calif. Tax Service at paragraph 1663.45. The annotation provides, in part:

"Medical oxygen sold by a medical supply house to an individual who uses the oxygen under a doctor's prescription is 'furnished by a physician to his own patient for treatment of the patient' within the meaning of paragraph (A) (2) of ruling 22."

The exemption is not limited to sales by medical supply houses and may be claimed by any seller of oxygen if the conditions for exemption exist.

In order to support your deduction for sales of oxygen, it is suggested that you maintain adequate and complete records, i.e., physician's prescription directing his patient to use the oxygen for human treatment. In this way the Board's auditor would be in a position to allow any deductions for oxygen which may otherwise be questioned (see Ruling 78, Records, copy enclosed).

We trust this information is sufficient for your purpose. However, if you have further questions regarding this matter, please advise.

Very truly yours,

Jack D. Paulson
Tax Counsel

JDP:ph [lb]