

**STATE BOARD OF EQUALIZATION**

January 28, 1969

Dear Mr. [X],

After reviewing your letter of December 17, 1968 and Mr. B. E. Banks' letter to you of December 10, I have concluded that you are correct in your contention that sales of oxygen to municipal fire departments are exempt.

We have earlier held that oxygen is a "medicine" when sold to hospitals or to individuals pursuant to a doctor's prescription. Nothing in Revenue and Taxation Code Section 6369(b), defining "medicines" requires that they be prescribed by authorized persons. Rather, the section speaks of "any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use" In my opinion, once we find under any fact circumstances that medical oxygen is a "preparation or substance" which meets the terms of this definition, the issue is settled for all sales of medical oxygen meeting the provisions of Section 6369(a).

Section 6369(a) (5) merely states "Sold to this State or any political subdivision or municipal corporation thereof, for use in the treatment of a human being" The code does not define "treatment of human being". Provided the oxygen is used for "treatment" of a human being, I assume it is used in substantially the same way and for the same purposes by the fire department as by hospitals, etc. Since the only requirement of the code is that it be sold to the political subdivision, and there is no requirement that it be at a doctor's direction, the sale is exempt.

Very truly yours,

T. P. Putnam
Tax Counsel

By Lawrence A. Augusta
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