

**Technical corrections were made to this notice on December 20, 2010 by Revenue Notice # 10-06. Please see Revenue Notice # 10-06 for the corrected language. Also, please see Revenue Notice # 09-01 for amendments to this notice.**

## **Minnesota revenue notice number 98-10**

### **MinnesotaCare: Legend Gas Distributors**

This Revenue Notice explains the application of the MinnesotaCare tax to payments received by a legend gas distributor for sales made to a hospital, health care provider, or other entity that dispenses legend drugs to patients or consumers.

The MinnesotaCare tax is imposed on the gross revenues received by a wholesale drug distributor. Gross revenues are defined in Minnesota Statutes, § 295.50, subdivision 3, as the total amounts received by a wholesale drug distributor for sale or distribution of legend drugs delivered in Minnesota.

Legend drugs are defined in Minnesota Statutes, § 151.01, subdivision 17, as a drug which is required by federal law to bear the following statement, "Caution: Federal law prohibits dispensing without a prescription."

**Issue:** Are legend gases - including oxygen - considered legend drugs and thus subject to tax?

**Department position:** Legend gases are subject to tax since they fall within the definition of a legend drug; these gases must bear the federal warning statement regarding their dispensing. Oxygen is considered a legend drug when it is sold for medical use. Therefore, legend gas distributors are subject to the MinnesotaCare tax on gross receipts from the sale of oxygen for medical use. If oxygen is sold for some other purpose (e.g., industrial), it is not considered a legend drug and not subject to the MinnesotaCare tax. Hospitals and other health care providers may deduct the cost of legend gases in the same manner they deduct the cost of other legend drugs under Minnesota Statutes, § 295.53, subdivision 1(6).

Dated: 8 June 1998

Terese Koenig, Director  
Appeals, Legal Services and Criminal Investigation Division