

REPLY TO: P.O. BOX 429
MONTPELIER, VERMONT 05601-0429
Tel: (802) 828-2560
Fax: (802) 828-5873
TDD: (802) 828-2574

<date>

<name>

<title>

<company>

<address>

<city, state zip>

Formal Ruling 2006-06

Dear <name>:

You have requested a formal ruling as to whether the <product>, sold by <company>, is subject to the sales and use tax. <Company> currently collects and remits sales and use tax in Vermont.

According to the information contained in your letter and accompanying brochure, <product> is designed for use in the hospital operating room. The device, approved by the Federal Drug Administration, is designed to help the orthopedic surgeon reduce unstable lower leg fractures prior to internal or external fixation appropriate for the injury. Use of the device simplifies operating procedures by reducing operating times and eliminating the need for a traction table.

Vermont sales tax is imposed upon the receipts from the sale of tangible personal property sold at retail in this state. 32 V.S.A. § 9771(1). Specifically exempted from the tax are drugs intended for human use, durable medical equipment, mobility enhancing equipment and prosthetic devices and supplies used in treatment intended to alleviate human suffering or correct human physical disabilities. 32 V.S.A. § 9741(2).

Based on the information you have provided, <product> is exempt from the tax. The device constitutes durable medical equipment because it is used for a medical purpose, can withstand repeated use, is not worn on or in the body, and is generally not useful to a person in the absence

of illness or injury. 32 V.S.A. § 9701 (30).^{*} Moreover, its intended usage in the treatment of lower limb fractures serves to both alleviate human suffering and to correct a physical disability.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletion is attached, and you may request that within thirty (30) days the Commissioner delete any further information that might identify the interested parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days.

Sincerely,

Judith Henkin
Attorney for the Department

Approved this ____ day of _____, 2006.

Tom Pelham
Commissioner of Taxes

^{*} The Department has recently revised its sales and use tax statutes to conform to requirements of the Streamlined Sales Tax Agreement (SSTA), a multi-state initiative designed to promote simplification of, and thus enhanced compliance with, sales and use tax laws nationwide. Changes in the law are scheduled to take effect on January 1, 2007. In tandem with changes in the law, the Department is in the process of promulgating new sales and use tax regulations; the language used here is derived from those new regulations. See Proposed Regulation § 1.9741(2) (available on the Department's website). Note, however, that the new statutory and regulatory language does not change the Department's construction of the law regarding taxability of this and similar products.