

September 4, 2007

<name>  
<company>  
<address>  
<city state zip>

Formal Ruling 2007-08

Dear <name>:

You have requested a formal ruling on behalf of <company> as to whether various products – silicone inserts, foam inserts, silicone breast forms, mastectomy bras, and foam pads – marketed for and used by persons having undergone mastectomies, lumpectomies or other breast surgeries, are subject to the Vermont sales and use tax. With your request, you have provided what appears to be the manufacturers' description of each product.

Vermont imposes a sales tax on the sales price of tangible personal property sold at retail in this state. 32 V.S.A. § 9771(1). “Tangible personal property” is “personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses.” 32 V.S.A. § 9701(7). Section 9741(2) of Title 32, however, the so-called “medical exemption,” specifically exempts drugs intended for human use, durable medical equipment, mobility enhancing equipment, and prosthetic devices. A prosthetic device is defined as “a replacement, corrective, or supportive device . . . worn on or in the body” that replaces a missing part of the body, corrects or prevents a physical deformity or malfunction, or supports a weak or deformed portion of the body. 32 V.S.A. § 9701 (35); Reg. § 1.9701(42)(E). “[A]rtificial limbs, artificial eyes, prescription eyeglasses and contact lenses, hearing aids, dentures and dental appliances, electronic voice producing machines, cranial hair prosthesis, cervical collars, heart valves, pacemakers, orthotic devices, trusses, and fabric and elastic supports and braces” are listed in the regulation as examples of prosthetic devices. *Id.*

Based on the information you have provided, the breast forms, both full and partial, are specifically designed to replace a missing part of the body after surgery, and are therefore prosthetic devices which are exempt from the tax. It is immaterial whether the forms are silicone or foam. In addition, the foam pads, which are sometimes placed behind the forms, are used as an aid in replicating the shape of the breast and are likewise exempt from the tax.

Mastectomy bras are a type of clothing, which is not subject to the sales tax. 32 V.S.A. § 9701(24) (definition and examples of clothing); 32 V.S.A. § 9741(45) (clothing exemption).

In addition to product information about the aforementioned items, you have attached to your ruling request information about bust enhancement products, including foam and silicone breast enhancers, pushups, and bra cups. These items are described as being “[g]reat for formals, strapless dresses, bridal wear and swimsuits where smooth lightweight shaping is necessary.” They may be worn either on the

body or can be permanently sewn into a garment to “give a younger look to any figure . . . [and] add fullness,” or in the case of the pushups, to “add cleavage, fullness and lift in a variety of low cut bras and gowns.”

Unlike the foam and silicone inserts and pads, the bust enhancers, pushups and bra cups are not exempt from the tax under the medical exemption because they do not substitute for a missing part of the body. Instead, they are typically used to supplement the wearer’s breast and change or augment the breast’s natural shape.

The enhancers, pushups and bra cups are exempt from the sales tax, however, because they are “clothing” under Vermont law. 32 V.S.A. § 9741(45). Vermont broadly defines “clothing” to include “all human wearing apparel suitable for general use.” 32 V.S.A. § 9701(24). The statute contains a non-exclusive list of examples of clothing, and while bust enhancement products are not expressly named, related items such as formal wear, girdles and underwear, are included. 32 V.S.A. § 9701(24)(A). Additionally, the products are not specifically excluded from the definition, 32 V.S.A. § 9701(24)(B), nor are they akin to the items listed as examples of “clothing accessories or equipment” that are subject to the tax. 32 V.S.A. § 9701(25)(A)-(K) (examples include briefcases, cosmetics, hair notions, handbags, jewelry, non-prescription sunglasses, umbrellas, wallets, watches, wigs and hairpieces); 32 V.S.A. § 9741(45) (definition of “clothing” does not include clothing accessories or equipment).

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 \_\_\_\_\_, 2007.

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Tom Pelham  
Commissioner of Taxes