



State of Vermont
Department of Taxes
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Agency of Administration

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September 14, 2009



Formal Ruling 2009-07

Dear [REDACTED]

You have requested a formal ruling on behalf of your client, [REDACTED]. I have reviewed the information that you supplied as well as your client's website.

According to your letter, [REDACTED] sells specialty bathtubs at retail to Vermont customers. The bathtubs are walk-in style, with a door that allows customers who are infirm or disabled to enter without having to step over the wall of the tub. The tub consists of one unit which includes a permanently affixed power chair and lift to aid with lowering and raising the user from the bathtub.

You ask whether the specialty bathtubs, as described, qualify as exempt from the sales and use tax as durable medical equipment.

Vermont law exempts from the sales and use tax the retail sales and use of

[d]rugs intended for human use, durable medical equipment, mobility enhancing equipment and prosthetic devices and supplies . . . used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities.

32 V.S.A. § 9741(2).

In turn, "durable medical equipment" is defined as



equipment including repair and replacement parts for such equipment, but does not include "mobility-enhancing equipment," which:

- (A) can withstand repeated use; and
- (B) is primarily and customarily used to serve a medical purpose; and
- (C) generally is not useful to a person in the absence of illness or injury; and
- (D) is not worn on the body.

32 V.S.A. § 9701(30).

Additionally, the Department has promulgated a regulation that provides a non-exclusive list of exempt durable medical equipment. The examples include "bath and shower chairs, commode chairs, dialysis treatment equipment, drug infusion devices, feeding pumps, hospital beds, MRIs, oxygen equipment, resuscitators, and x-ray machines." Reg. § 1.9741(2)(D)(1). Furniture in a hospital or doctor's waiting room, however, is not exempt because it is not designed to be used in the treatment of human ailments or disabilities. *Id.*

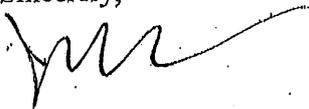
Based on the available information, the specialty bathtubs sold by [REDACTED] are exempt from the sales and use tax as durable medical equipment. The tubs are typically used to aid persons that are ailing or disabled. Moreover, they withstand repeated use, are primarily and customarily used for a medical purpose, are not generally useful to a person in the absence of illness or injury, and are not worn on the body.

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.

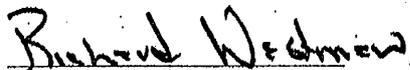
Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days:

Sincerely,



Judith Henkin
Attorney for the Department

Approved this 21st day of Sept., 2009.



Richard Westman
Commissioner of Taxes