

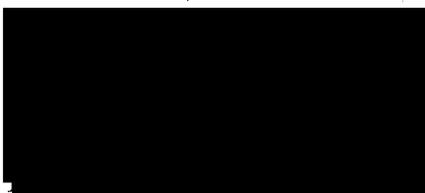


State of Vermont  
Department of Taxes  
133 State Street  
Montpelier, VT 05633-1401

Agency of Administration

REPLY TO: P.O. BOX 429  
MONTPELIER, VERMONT 05601-0429  
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September 14, 2009



Formal Ruling 2009-08

Dear Mr. [REDACTED]

You have requested a formal ruling on behalf of [REDACTED] concerning the applicability of sales and use tax on the membership fees for [REDACTED] cards. The facts on which this ruling is based are those that you have provided.

[REDACTED] the operator of retail drug stores, offers the [REDACTED] to its customers. The card is a platform card and may carry multiple programs including the [REDACTED]. For a yearly fee of \$20 for individuals and \$35 for families, members of the [REDACTED] receive discounts on the cash prices for select medications in the [REDACTED]. The [REDACTED] offers over 5,000 select medications in all classes of drugs currently available on the market, with average savings of 12.8% for 30-day quantities and 18.8% for 90-day supplies. The program is offered to persons with no or insufficient prescription drug coverage and is not available to recipients of benefits from a publicly funded program. The program is a discount prescription buying program; it is not insurance or an insurance benefit, nor is it intended as a substitute for insurance.

In addition to discounted prescriptions, members of the [REDACTED] are automatically enrolled in the [REDACTED] which entitles its participants to a 10% rebate on any [REDACTED] branded items and in-store photofinishing items. Reward dollars are loaded onto the [REDACTED] and may be applied to future purchases at any [REDACTED] location.



The Vermont sales tax is imposed pursuant to 32 V.S.A. § 9771 (“Imposition of sales tax”). Under subsection (1) of the statute, the tax is imposed on the sales price of tangible personal property; subsection (2) imposes the tax on public utility services; subsection (3) on fabrication; subsection (4) on admissions to places of amusement; subsection (5) on telecommunications service; subsection (6) on directory assistance; subsection (7) on tangible personal property to an advertising agency; and subsection (8) on specified digital products. 32 V.S.A. § 9771.

The primary purpose when construing a statute is to effectuate the intent of the legislature. *Delta Psi Fraternity v. City of Burlington*, 2008 Vt. 129, ¶ 7. Lawmaking authority rests with the legislature, rather than with unelected administrative officials. *Martin v. State*, 2003 Vt. 14, ¶ 16. The commissioner may not extend the operation of the law to encompass taxation that is not within the scope of the taxing statute. *Cf.* 32 V.S.A. § 3201 (“Powers and duties of commissioner”).

Here, the legislature has not imposed the sales tax on charges that merely allow access to discounted prices on discretionary purchases of tangible personal property, whether taxable or exempt.\* This is in contrast to the applicability of the tax to membership fees for the use of gyms and other recreational facilities, which are taxable amusement charges pursuant to 32 V.S.A. § 9771(4). *See also* Reg. § 1.9771(4)-1.C. Accordingly, the membership charge is not subject to the sales and use tax.

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.

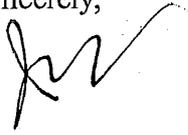
This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department’s general approach, but the Department will not be bound by this ruling in the case of any other taxpayer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

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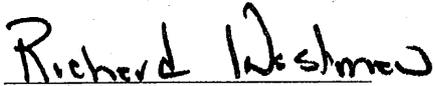
\* The retail sales and use of drugs intended for human use which are “used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities” are exempt from the tax. 32 V.S.A. § 9741(2); *see also* Vermont Tax Regulation (Reg.) § 1.9741(2).

Sincerely,



Judith Henkin  
Attorney for the Department

Approved this 21<sup>st</sup> day of Sept., 2009.



Richard Westman  
Commissioner of Taxes