

February 12, 2010

<REQUESTER>
<COMPANY>

Dear <REQUESTER>:

You have requested a ruling on whether three new products which will become available in February 2010 are subject to Vermont sales tax.

<COMPANY> (<COMPANY>) sells nutritional, dietary, and skin care products through a multi-level network of independent distributors, similar to <COMPANY 2>. Your physical location is in <CITY, STATE>. <COMPANY> charges sales tax based on the address to which it ships and based upon the suggested retail price, except that orders by your distributors for their personal use that are less than \$55 retail value are taxed based on the wholesale price. <COMPANY> files one consolidated state tax return; the independent distributors do not file returns with Vermont.

The new products are soy nuts - to be sold in a 9.9 ounce package - and 2 flavors of granola snack bars.

Sales of food for human consumption off the premises where sold are exempt from the Vermont sales tax. 32 V.S.A. § 9741(13). Although the food items at issue will likely be consumed on the premises where sold¹, the “consumption off premises” phase is intended to distinguish the sale of grocery type items from the sale of taxable meals². These new products appear to be sold as grocery type items and therefore qualify for the exemption.

Items such as skin care products are subject to the Vermont sales tax at the rate of six percent of the “sales price charged.” Therefore, regardless of the purchaser, the tax base is the price charged.

<COMPANY> is not on the Department’s list of businesses that have requested permission to file a consolidated return in lieu of returns filed by independent distributors. Therefore, I request that you complete and return the enclosed agreement.

¹ The food items are sourced to the location where receipt by the purchaser occurs. *See* Reg. §1.9701(8), General Sourcing Rules.

² “Taxable meals” are also exempt from the general sales tax but are taxable under Chapter 225 of Title 32.

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 deletions is attached, and you may request within thirty (30) days that 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 the requester 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 is not bound by this ruling in the case of any other taxpayer or in the case of any change in relevant statutes or regulations.

Section 808 of Title 3 provides that this ruling has the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty (30) days.

Sincerely,

Molly Bachman
General Counsel

Approved this ____ of February 2010.

Richard Westman
Commissioner of Taxes