

REDACTED VERSION

[date]

[taxpayer]

Re: Formal Ruling 13-02

Dear [name]

This is a formal ruling for [taxpayer] regarding the applicability of Vermont sales tax to the sales of its combination drug-medical device “[product name].” This ruling is based upon representations in your letter of [date], and the materials you enclosed with your letter.
[sentence redacted]

RULING

Based upon the facts presented, sales of the [product], a combination drug-and-medical device, are exempt from sales and use tax under 32 V.S.A. § 9741(2), the exemption for drugs and prosthetic devices.

FACTS

Your client, [taxpayer] is a biotechnology company specializing in products to promote healing of [type] injuries and diseases. One of its products, “[product name]” is a combination drug-and-medical device used to create bone replacement [deleted] (Product). The Product has not yet received marketing approval from the Federal Food and Drug Administration.

You have asked for a ruling on whether the Product is subject to Vermont’s sales and use tax.

DISCUSSION

Vermont’s sales and use tax laws exempt drugs and prosthetic devices intended for human use, as follows:

§ 9741. Sales not covered

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(2) **Drugs** intended for human use, durable medical equipment, mobility enhancing equipment, and **prosthetic devices** and supplies, including blood, blood plasma, insulin, and medical oxygen, 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) (emphasis added.). Drugs and prosthetic devices are defined as follows:

(29) Drug:

means a compound, substance, or preparation, and any component of a compound, substance, or preparation, but not including food and food ingredients, dietary supplements, alcoholic beverages, or grooming and hygiene products, that is:

(A) Recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, official National Formulary, or in supplements to any of them; or

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

(35) Prosthetic device:

means a replacement, corrective, or supportive device, including repair and replacement parts for such device worn on or in the body to:

(A) artificially replace a missing portion of the body;

(B) prevent or correct a physical deformity or malfunction; or

(C) support a weak or deformed portion of the body.

32 V.S.A. § 9701(29), (35).

The Product is a substance intended for use in the treatment of [type] injuries and diseases and is thus exempt as a “drug.” It is also a device used to correct [redacted] weak bone or physical deformity or malfunction, and is thus exempt as a “prosthetic device.”

The fact that the Product has not yet received FDA marketing approval does not affect its exemption, since none of the relevant sections of law requires such approval.

This ruling is also in accord with the Department’s prior Formal Ruling 99-04.

GENERAL PROVISIONS

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 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to

protect confidentiality, 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 statutes or regulations.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808,815.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date