

[Date]

[Taxpayer]

[Address]

[Address]

Re: Formal Ruling 16-14

Dear [Taxpayer]:

This is a formal ruling for [Taxpayer], regarding the applicability of sales tax to sales of certain medical equipment, parts and related items. This ruling is based upon representations in your email dated [Date], and the attached materials.

FACTS

Taxpayer is a distributor of medical diagnostic equipment such as X-ray and CAT scan machines and parts for these machines. Taxpayer also uses certain of these parts in its repairs of these machines. Taxpayer also sells items used in conjunction with these machines, such as collimator lamps, X-ray film processors and X-ray film. Taxpayer also sells Fixer and Developer, which it describes as "put into the equipment to produce X-rays." Taxpayer also sells many other products, including various lights, image cleaning solution, mammography organizer caddies, and various other items.

Taxpayer has requested a ruling on whether Vermont's sales tax applies to its Vermont sales of X-ray and CAT scan machines and parts, and to its sales of other listed items.

DISCUSSION

The law - Durable Medical Equipment

Vermont's sales tax applies to retail sales of tangible personal property and to certain other items not relevant here. 32 V.S.A. § 9771(1). Sales of certain items are exempt. 32 V.S.A.

§ 9741. One of these exemptions is for medicine and medical equipment and supplies:

(2) Drugs intended for human use, durable medical equipment, and prosthetic devices and supplies, including blood, blood plasma, insulin, and medical oxygen, used in diagnosis or treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities

32 V.S.A. § 9741(2). In addition to the general requirement that "durable medical equipment" be "used in diagnosis or treatment," it must also meet a specific statutory four-part test:

- (A) can withstand repeated use; and
- (B) is primarily and customarily used to serve a medical purpose;
- (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). "Durable medical equipment" is also defined in the statute to include "repair and replacement parts for such equipment." *Id.*

The Department's regulations also define "durable medical equipment" to include "repair and replacement parts," as well as "all components or attachments used in conjunction with" the equipment:

Reg. § 1.9741(2) Medical Exemption

Drugs intended for human use, durable medical equipment, mobility enhancing equipment, and prosthetic devices are exempt from tax . . .

D. Both "durable medical equipment" and "mobility-enhancing equipment" are exempt from the tax.

1. "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful

to a person in the absence of illness or injury, and is not worn on or in the body. 32 V.S.A. § 9701(30). "Repair and replacement parts" as used in this definition include all components or attachments used in conjunction with the durable medical equipment.

Examples of exempt durable medical equipment 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

Vermont Department of Taxes, Sales and Use Tax Regulations ("Reg.") § 1.9741(2)(D)(1). The examples in the regulation of exempt equipment include X-ray machines. All of the examples in the regulation of "durable medical equipment" are items used directly with the patient.

Duly adopted regulations have the force of law. 3 V.S.A. § 845(a).

The law - Medical Supplies

The statute and regulations together provide a four-part test for exempt medical "supplies." These must be (1) "used in diagnosis or treatment . . . or . . . to correct physical disabilities," (2) "therapeutic in nature," (3) "not normally used by persons absent illness or injury," and (4) "not capable of repeated usage":

(2) . . . supplies, including blood, blood plasma, insulin, and medical oxygen, *used in diagnosis or treatment* intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities

32 V.S.A. § 9741(2); and

F. Supplies used in treatment are exempt from the tax. The supply must be *therapeutic in nature, not normally used by persons absent illness or injury*, and in contrast to durable medical equipment, *not capable of repeated usage*.

Examples of supplies that are exempt include bandages and surgical dressings, hypodermic syringes and needles, disposable heating pads, and colostomy devices.

Examples of supplies not exempt from the tax are body massage appliances, therapeutic foot baths, room humidifiers and air conditioners, household baby and bathroom scales, athletic supporters, medic alert bracelets, and hot tubs.

Reg. § 1.9741(2)F. The examples in the statute and the regulation of exempt medical supplies are all items used on or in the body.

X-ray and CAT scan machines

Under the regulations quoted above, your Vermont sales of X-ray machines are expressly exempted from sales tax as “durable medical equipment” (DME). A CAT scan machine is similar, in that it is a medical diagnostic machine, and meets the four-part test for DME, and is therefore also exempt. The collimators, collimator lamp bulbs, and X-ray film processors are also exempt, because they are “repair and replacement parts . . . components or attachments used in conjunction with” the X-ray machines. To the extent that any of the other items you sell are “components or attachments used in conjunction with” the X-ray or CAT scan machines, they are exempt.

The X-ray film and Fixer and Developer are not technically a component or attachment, and cannot “withstand repeated use.” However, because they are “put into the equipment to produce X-rays,” they are so integral to the use of the X-ray machine that the Department considers them sufficiently equivalent to “components used in conjunction with” the X-ray machine and so, exempt.

Other products may not be “durable medical equipment” or “medical supplies”

We have insufficient details to rule on the other items on your product list. It is not clear whether they are components or parts of the exempt X-ray or CAT scan machines. It is also not clear whether they meet the definition of DME and are “used in diagnosis or treatment” and, like the examples in the regulation, are used directly with the patient. Finally, it is not clear whether these items qualify as exempt medical “supplies” which are “therapeutic in nature” and “used in

diagnosis or treatment” and not “capable of repeated usage” and are, like the examples in the statute and regulation, used on or in the body for medical treatment.

Generally, exemption statutes are “strictly construed against the taxpayer” and confined “to the express letter or necessary scope of their language.” Hopkinton Scout Leaders Ass'n v. Town of Guilford, 2004 VT 2, ¶ 6, 176 Vt. 577, 578 (2004).

Repair invoices; bundled transactions

Labor charges for maintenance or repair are not subject to sales tax if separately stated on the customer invoice. If a charge for parts is stated separately on the repair invoice, sales tax will apply to those charges, unless they are for durable medical equipment or exempt medical supplies, as described above (or are charges for items eligible for any other sales tax exemption).

If your maintenance or repair invoice shows a single price, and that price includes charges for both labor and parts, the transaction is a “bundled transaction.” If any item in the “bundle” is subject to sales tax when sold separately, then the entire bundled price is subject to sales tax. Reg. § 1.9701(4)-3.¹ If, however, the single price is for labor charges bundled only with charges for items which qualify as durable medical equipment or exempt medical supplies, no sales tax will be due on that bundled transaction. Please note that all receipts are presumed subject to sales tax until the contrary is established, and the burden of proving that any receipts are not taxable is upon the person required to collect the tax. 32 V.S.A. § 9813(a).

¹ If, however, the purchase price of the parts separately is ten percent or less of the total repair charge, then the taxable item is considered de minimis, and the entire transaction is not taxable. Reg. § 1.9701(4)-3, C.3.

Refunds

You may apply to the Commissioner for a refund of sales tax you erroneously collected on an exempt sale; a refund will only be paid if you can show that you have repaid such tax to your customer. 32 V.S.A. § 9781(a); Reg. § 1.9781.A. You must make the refund request within three years of the date the customer paid the sales tax to you. Id. Alternatively, your customer may apply directly to the Commissioner for refund of sales tax it paid on an exempt sale. 32 V.S.A. § 9781(a); Reg. § 1.9781.B. The customer must make the refund request within three years of the date you were required to report the tax receipt to the Commissioner. Id.

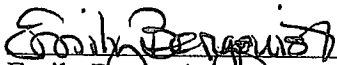
GENERAL PROVISIONS

Issuance of this ruling is conditioned upon the understanding that neither the taxpayer nor a related taxpayer is currently under audit or involved in an administrative appeal or litigation concerning the subject matters of the ruling. 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 see 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.


This ruling may be made public after deletion of the taxpayer's name and any information which may identify the taxpayer. 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 taxpayer. The final discretion as to deletions rests with the Commissioner.

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


Emily Bergquist

Nov 17, 2016
Date

Approved:


Mary N. Peterson
Commissioner of Taxes

Nov 21, 2016
Date