

Ruling 2002-03

Vermont Department of Taxes

Dated: June 22, 2002

Written By: Mary L. Bachman, General Counsel

Approved By: Janet Ancel, Commissioner of Taxes

You have requested a ruling as to whether the sale of certain products by [company] are subject to sales tax. This ruling relies on the product descriptions in your undated letter [received on or about June 2, 2002] and our telephone conversation of July 22, 2002.

[company] sells the following products primarily to dentists who use them in their practices. [company] also sells to retailers who resell the products to consumers. [company] does not sell directly to consumers.

1. [product] provides pain relief for canker sores, dentures and orthodontic appliance irritations and other mouth sores.
2. [product] is a premixed oxygenating hygienic dental rinse used to cleanse canker sores and minor mouth wounds.
3. [product] is a sterilant and disinfectant used in cleansing dental instruments.
4. [product] is a fluoride rinse for orthodontic patients. It is also used to provide fluoride to children over 6 in areas where drinking water does not provide sufficient fluoride.
5. [product] is an at-home tooth whitening procedure acquired through a dental professional. Once a patient is approved for the product, the dental professional makes a custom fitted mouth tray for the patient. The patient uses the product at home. The product cost is passed on to the patient on the dentist's invoice.
6. [product] is a fluoride treatment gel used in the prevention of tooth decay.

Applicable Law

Receipts from retail sale of the following products are exempt from Vermont sales tax:

...medicines and drugs sold pursuant to a doctor's prescription for human use, oxygen for medical purposes, blood, blood plasma, artificial components of the human body, prosthetic devices, medicinal appliances, corrective appliances, corrective optical devices, dentures, hearing aids, seeing eye dogs, crutches, wheelchairs, hospital type beds, medical and dental devices and instruments, medical and dental equipment (including component parts thereof) and supplies used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities, and sales or rentals of stairlift chairs sold pursuant to a doctor's prescription for human use.

32 V.S.A. § 9741(2).

The statutory exemption is explained in Reg. § 1.9741(2)-1(a), which provides in part as follows:

Medical and dental equipment and supplies are exempt from tax if they are the type of items which are commonly and primarily used in treatment, including self-treatment, intended to alleviate human suffering or to correct human physical disabilities. Such items must be designed primarily to cure, correct, or reduce the severity of human ailments, injuries or disabilities. Items which are primarily hygienic or preventative in nature are not exempt.

Tax is imposed on the sale of tangible personal property sold at retail in the State. 32 V.S.A. § 9771(1). "Retail sale" excludes sales for resale. 32 V.S.A. § 9701(5).

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[company]'s sales to dentists of the listed products are exempt because the Department assumes that treatments by medical and dental professionals are intended to alleviate or correct a medical condition. It will not disqualify supplies which these professionals use from exemption solely because they have a preventative or hygienic use or purpose.

[company]'s sales to retailers (who resell the products to consumers) are not taxable because such sales are excluded from the definition of "retail sale". 32 V.S.A. § 9701(5).

Note, however, that sales of some of the items to consumers by either dentists or retailers are taxable: [product] (because it is not used to cure or correct or reduce the severity of an existing ailment or injury - rather, its primary purpose is to prevent the development of dental ailments, particularly cavities); [product] (because the intended benefit is cosmetic, it does not treat an ailment, injury or disability. It should be noted that tax should be changed on the entire invoice amount for providing the [product]. Although professional services were rendered in approving the patient for the [product] and in making the tray, the focus of the transaction is the transfer of tangible personal property (the trays and whitening agent) and the entire charge is therefore taxable. 32 V.S.A. § 9741(35).); [product] (primarily preventative).

[product], which is used to disinfect instruments, would not ordinarily be sold to consumers. If it were, this use is beyond the scope of the exemption and sales of [product] are therefore taxable.

On the other hand, [product] and [product] are exempt from tax even if sold directly to the consumer. [product] is a dental supply used in treatment intended to alleviate human suffering. [product] is also a dental supply. While it is a hygienic product, it is designed primarily to cure, correct or reduce the severity of a human ailment (canker sores) and injuries (mouth wounds).

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of the ruling showing the proposed deletions is attached, and you may request, within 30 days, that the Commissioner delete any

further information which might tend to identify interested parties. The final discretion as to deletions, however, remains with the Commissioner.

This ruling is issued solely to [company] 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 regulation.

3 V.S.A. § 808 provides that this ruling will have the same status as an agency decision or order in a contested case. You have the right to appeal this ruling within thirty (30) days.