

July 31, 2006

<Name>

<Title>

<Organization>

<Address>

<City, State, Zip Code>

Formal Ruling 2006-01

Dear <Name>:

You have requested a ruling as to whether over-the-counter nicotine replacement products – the nicotine patch, gum, and lozenge – are subject to Vermont sales tax. This ruling is based on the limited facts contained in your letter of April 12, 2006.

Pursuant to Vermont's sales and use statutes, 32 V.S.A. §§ 9701 *et seq.*, the nicotine replacement products that you describe qualify as drugs because they are “[i]ntended for use in the diagnosis, cure, mitigation, treatment or prevention of disease”. 32 V.S.A. § 9701(29)(B). As you are well aware, there are clear links between cigarette smoking and disease – for example, smoking accounts for nearly one-third of the cancer deaths in the United States each year* – and these products are used specifically to aid smokers in their efforts to quit. Thus, they are substances used for disease prevention and fall within the statutory definition of “drugs”.

Further, the nicotine replacement products are exempt from the sales tax because their use is “intended to alleviate human suffering”. *See* 32 V.S.A. § 9741(2) (drugs intended to alleviate human suffering are exempt from the sales and use tax). The products aid in tobacco cessation by releasing small, steady doses of nicotine into the body to relieve the symptoms and discomfort often associated with nicotine withdrawal.

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.

* *See* National Cancer Institute Fact Sheet, <http://www.cancer.gov/cancertopics/factsheet>.

Sincerely,

Judith Henkin
Attorney for the Department

Approved this ____ day of _____, 2006.

Tom Pelham
Commissioner of Taxes