

REPLY TO: P.O. BOX 429  
MONTPELIER, VERMONT 05601-0429  
Tel: (802) 828-2560  
Fax: (802) 828-5873  
TDD: (802) 828-2574

<date>

<name>

<title>

<company>

<address>

<city, state zip>

#### Formal Ruling 2006-05

Dear <name>:

By letter dated <date> you requested a ruling whether <company> <product> are subject to the Vermont sales and use tax.

According to your letter, <company> is active in developing technology for monitoring glucose levels in persons with diabetes. <Company> has developed the <product> which consists of a tiny wire-like sensor that a patient inserts just under his or her skin to continuously measure glucose levels and transmit them wirelessly to an STS Receiver. The receiver enables a patient to check his or her current glucose measurements and trends and to receive alerts of high or low glucose levels. The product has been approved by the Federal Drug Administration, and is or will be available to patients by doctor's prescription.

As an initial matter, you state in your letter that <company> intends to sell the product "directly to customers" and "electronically" and that the products will be shipped from your <city> headquarters. Vermont sales tax is imposed upon the receipts from the sale of tangible personal property sold at retail "in this state"; *see* 32 V.S.A. § 9771(1); accordingly, Vermont would not require payment of the sales tax by <company> if it is shipping products directly to its Vermont customers and has no nexus with the state. The compensating use tax, however, should be remitted by a Vermont purchaser if the product is one which would have been subject to the sales tax were it sold in Vermont and will be used, stored, or consumed within the state. 32 V.S.A. §§ 9701 (13) (definition of "use"); 9773 (imposition of use tax). In the alternative, <company> can voluntarily collect the tax from its Vermont customers and remit the collected tax to the state.

Based on the information you have provided, however, the STS System and its replacement components (sensors, transmitter, and receiver) would be exempt from the tax. Vermont law specifically exempts from the sales and use tax drugs intended for human use, durable medical equipment, mobility enhancing equipment and prosthetic devices and supplies used in treatment intended to alleviate human suffering or correct human physical disabilities. 32 V.S.A. § 9741(2). The glucose monitoring system (transmitter and receiver) qualifies as durable medical equipment because it is equipment capable of repeated use, primarily and customarily serves a medical purpose, and would not normally be used by persons absent illness or injury. The STS replacement sensors are exempt medical supplies used in treatment; the sensors have a limited life span and are not capable of repeated use, serve a medical purpose, are therapeutic in nature, and are not normally used by persons absent illness or injury.\*

In contrast to the STS System, the accessory items sold by <company> and listed on your order form – for example, the optional carry case/belt clip, charger plug, cables and shower patch – are not considered exempt medical equipment or supplies used in treatment under Vermont law. These items do not serve a medical purpose and are considered tangible personal property subject to the tax.

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 deletion is attached, and you may request that within thirty (30) days 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 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.

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\* The Department has recently revised its sales and use tax statutes to conform to requirements of the Streamlined Sales Tax Agreement (SSTA), a multi-state initiative designed to promote simplification of, and thus enhanced compliance with, sales and use tax laws nationwide. Changes in the law are scheduled to take effect on January 1, 2007. In tandem with changes in the law, the Department is in the process of promulgating new sales and use tax regulations; the language used here is derived from those new regulations. See Proposed Regulation § 1.9741(2) (available on the Department's website). Note, however, that the new statutory and regulatory language does not change the Department's construction of the law regarding taxability of medical equipment and supplies.

Sincerely,

Judith Henkin  
Attorney for the Department

Approved this \_\_\_\_ day of \_\_\_\_\_, 2006.

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Tom Pelham  
Commissioner of Taxes