

September 19, 2007

<name>
<company>
<address>
<city, state zip>

Formal Ruling 2007-09

Dear <name>:

You have requested a formal ruling on behalf of <company> as to whether amplification devices are subject to the Vermont sales and use tax. You state that the devices “are generally used by the hearing impaired,” from which it can be inferred that you believe the devices may qualify for a tax exemption because their users suffer from a medical condition.

Based on the product information you have provided from your company’s website, the “Amplification devices . . . makes everyday telephone conversations not only louder, but clearer and easier to understand.” Similarly, the device makes “your conversations LOUDER and CLEARER” and users may “‘shape’ sound to match [their] hearing needs.” The device’s description states that it is intended to “reach both the active aging population and the special needs market.”

Vermont imposes a sales tax on the sales price of tangible personal property sold at retail in this state. 32 V.S.A. § 9771(1). “Tangible personal property” is “personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses.” 32 V.S.A. § 9701(7). The law provides for exemptions from the tax, however, including the so-called medical exemption, which specifically exempts drugs intended for human use, durable medical equipment, mobility-enhancing equipment, prosthetic devices, and supplies commonly and primarily used in treatment intended to alleviate human suffering or to correct human physical disabilities. 32 V.S.A. § 9741(2).

Although amplification devices are evidently marketed for the hearing impaired, they do not fall within the medical exemption from the tax. They plainly do not qualify as drugs or mobility-enhancing equipment. *See* 32 V.S.A. §§ 9701(29) (definition of “drug”); 9701(34) (definition of “mobility-enhancing equipment”). Moreover, they do not qualify as durable medical equipment, which is defined as equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, and which generally is not useful to a person in the absence of illness or injury. 32 V.S.A. § 9701(30); Reg. § 1.9741(2)(D)(1). For example, bath and shower chairs, commode chairs, dialysis treatment equipment, drug infusion devices, feeding pumps, hospital beds, MRI’s, oxygen equipment, resuscitators, and x-ray machines are durable medical equipment. *Id.* In contrast to those items, devices are not medical in nature, are not designed to be used in the treatment of human ailments or disabilities, and may be used by, and useful to, persons whether or not they are ill or injured.

Further, although hearing aids qualify as prosthetic devices, amplified telephones differ in that they are not “replacement, corrective, or supportive device[s]” and are not “worn on or in the body” of the user. 32 V.S.A. § 9701(35) (prosthetic device is “replacement, corrective, or supportive device . . . worn on or in the body” that replaces a missing part of the body, corrects or prevents a physical deformity or malfunction, or supports a weak or deformed portion of the body); *see also* Reg. § 1.9701(42)(E).

Finally, amplification devices are not supplies used in medical treatment. Exempt medical supplies “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.” Reg. § 1.9701(2)(F). For example, blood, blood plasma, insulin, medical oxygen, bandages, surgical dressings, hypodermic syringes and needles are medical supplies. 32 V.S.A. § 9741(2); Reg. § 1.9701(2)(F). Amplification devices are not therapeutic in nature, are subject to repeated use, and therefore do not fall within Vermont’s medical supply exemption.

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.

Sincerely,

Judith Henkin
Attorney for the Department

Approved this ____ day of _____, 2007.

Tom Pelham
Commissioner of Taxes