

## ***Ruling 95-05***

Vermont Department of Taxes

Date: May 12, 1995

Written By: Timothy Collins, Attorney for the Department

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a ruling on the application of Vermont's sales tax law. This ruling relies on representations contained in your letter to the Department of Taxes dated March 23, 1993; upon the information contained in the brochures which you sent to the Department; and upon the information that you conveyed to me during our telephone conversation of May 3, 1995.

1. [Company] (the "Company") is a corporation located in [City, State].
2. The Company has no employees or business locations within Vermont.
3. Any sales in Vermont are made through independent representatives who sell products of other manufacturers as well. Upon receipt of an order, the representative calls the order to the Company who ships it directly to the customer.
4. Products shipped to customers within Vermont are sent by independent carriers such as Federal Express or U.P.S.
5. The Company current practice is to use resale certificates or exemption letters as support for exempting a customer from the sales tax.
6. The Company manufactures a variety of orthopedic devices for knees, ankles, wrists and shoulders. The specific products for which a ruling has been requested are:
  - a. [Product Name] (class CB): Custom fitted orthopedic device for Anterior Cruciate Ligament (ACL) Instability.
    - b. [Product Name] (class CB): Custom fitted orthopedic device for ACL Instability.
    - c. [Product Name] (class CM): Post operative brace/splint.
    - d. [Product Name] (class CP): Soft rubber bracing for weak joints, back etc.
    - e. [Product Name] (class FS): Custom orthopedic support.
    - f. [Product Name] (class F1): Non custom knee brace for ACL instability.
    - g. [Product Name] (class F1): Custom and non custom knee brace.
    - h. [Product Name] (class F1/F2): Post operative brace/splint).
    - i. [Product Name] (class F3): Post operative brace/splint.
    - j. [Product Name] (class F4): Protective knee brace/guard.
    - k. [Product Name] (class F6): Parts to above listed products.
    - l. [Product Name] (class F7): Parts for [Product Name] (class F4) brace listed above.
    - m. [Product Name] (class F8): Ankle Brace.
    - n. [Product Name] (class F9): Combined Instabilities knee brace.
    - o. [Product Name] (class GR): Combined Instabilities knee brace.
    - p. [Product Name] (class HM): Humeral fracture brace.
    - q. [Product Name] (class LG): Typesetting charge for personalized Logos.

r. [Product Name] (class LS): Literature for customer on how to use product.

s. [Product Name] (class ME):

7. No information was provided by the Company on the nature and use of the [Product Name] (class CM). The Company has stated that this it is no longer selling this product line. Accordingly, this Ruling will not address this area.

8. No literature or specific information was provided on the [Product Name] (class F3). The Company has orally stated that this brace is similar to the [Product Name] (class CP). This ruling will treat the [Product Name] (class F3) as a [Product Name] (class CP). To the extent that the design or purpose of the [Product Name] (class F3) differs from the [Product Name] (class CP), this ruling shall not be binding on the Department of Taxes.

9. The Company considers the [Product Name] (class F4) taxable unless the customer produces a doctor's prescription or unless another exemption such as sale for resale applies.

10. The Company has acknowledged that the measuring devices (class ME) are considered to be taxable. In addition, no specific information has been provided on this class of products. Accordingly, this ruling will not address these items.

11. The Company has requested a ruling on whether its other products would qualify for exemption from the sales tax under 32 V.S.A. § 9741(a)(2) and Regulation 1.9741(a)(2))1 as medical equipment or supplies.

12. This Ruling is addressed solely to the medical exemption. It does not address or rule on the applicability of other exemptions including the sale for resale exemption or the sale to an organization not covered by the sales tax. 32 V.S.A. § 9743.

Section 9741(a)(2) exempts from sales tax: "Sales of 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, medicinal 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."

This provision has been interpreted by regulation 1.9741(a)(2))1 which states that medical and dental equipment and supplies will be considered exempt from tax if they are designed primarily for use in treatment, including self treatment, to cure, correct, or reduce the severity of human ailments, injuries or physical disabilities. The exemption does not extend to item which are primarily hygienic or preventative in nature. An example given in the regulation which may provide some guidance is elastic bandages. Elastic bandages are considered to be an exempt product because they are primarily intended to correct human physical disabilities, even though they might also be used to prevent injuries.

In this instance, the literature provided by the Company indicates that product classes CB, CP, FS, F1, F2, F5, F8, F9, GR and HM qualify for the medical equipment exemption from sales tax. 32 V.S.A. § 9741 (a)(2). The above products are all designed with a primary purpose of correcting physical injuries or disabilities. Many of these

braces and splints are designed to be used in a post operative setting or to correct and stabilize a pre existing physical condition or injury. Although some of the braces in these categories could be used to prevent injury, the Department finds that the primary intention is to correct human physical disabilities.

With respect to the [Product Name] (class F4), the Department finds that the primary intent of the product is to prevent injury. Thus the product does not qualify for the medical equipment exemption. The Department does accept the Company's practice of exempting this product from tax when it is sold pursuant to a doctor's prescription, provided that the prescription is intended to correct or treat an existing disability. In that specific instance, the primary intent of the product is to correct a human physical disability and it would qualify for the medical equipment exemption.

With respect to the accessories (classes F6 and F7), the treatment of these classes is mixed. To the extent that the underlying product fails to qualify for the medical equipment exemption, then the accessories would also fail to qualify. Thus, the only way that accessories for class F4 could qualify for the medical exemption is if the purchase of the brace is made pursuant to a doctor's prescription.

If the underlying product does qualify for the medical equipment exemption, then the accessories must be examined to determine their primary use and intent. In order to qualify for the medical exemption, the accessory must have as its primary purpose the correction or treatment of the injury or disability.

Accessories that are primarily designed to aid in the treatment and rehabilitation of the injury or disability, such as a weight attachment or a range of motion limitation would qualify for the exemption. Non injury related accessories such as logo hats, duffel bags or carry bags would not qualify for the exemption because their primary purpose is not related to the treatment of the injury or disability. To the extent that the accessories are related to the braces and splints but have as their primary purpose a hygienic, preventative or cosmetic purpose such as a Lycra brace sleeve, sliding shields for sports use, or replacement pads and liners, the accessories would be taxable.

With respect to literature provided to the customer (class LS), the Company has failed to provide any specific information to the Department as to the nature and use of the literature at issue. Thus, no ruling can be given.

With respect to the logo setup fee (class LG), no specific information has been provided regarding the nature of this charge. The Department also has no information on whether any tangible personal property is transferred as a result of this fee. Accordingly, no ruling can be made. The Company is directed however to Ruling 87)11 which may provide it with some general information on the treatment of fabrication and imprinting charges.

This ruling is issued solely to your firm 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.