

Ruling 97-06

Vermont Department of Taxes

Date: August 13, 1997

Written By: George H. Phillips, Tax Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

Your letter of June 16, 1997 asked for a ruling on whether toothbrushes provided by dentists to patients incidental to treatment were subject to sales and use tax.

Dentists and dental hygienists often provide toothbrushes, floss, or similar supplies to patients during treatment sessions. These items are provided without separate charge and have retail value of only a dollar or two, a value which is not significant in light of the entire charge for the treatment. The Department offered advice informally several years ago, first holding that the dentists' purchase of the toothbrushes was subject to sales or use tax, then agreeing that an exemption applied. This advice, however, was never confirmed in writing. A recent letter ruling, No. 96-11, held that these items are taxable when sold by dentists but did not directly rule on whether they were taxable when given to patients without a specific charge.

Sales of tangible personal property are subject to the Vermont sales and use tax unless an exemption applies. 32 V.S.A. §9771. Section 9741(2), the "medical exemption", provides an exemption for certain medical supplies and equipment, including "...dental devices and instruments... dental equipment (including component parts thereof)... supplies used in treatment intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities...". Regulation 1.9741(2)-1 provides a test for determining whether a product is exempt: "(a) 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, injury or disabilities. Items which are primarily hygienic or preventative in nature are not exempt." Under this test, items such as toothbrushes and dental floss are not exempt because they are primarily hygienic or preventative. Because of this, sales to individuals, whether by stores or by dentists are taxable. The Department, however, assumes that treatments by medical and dental professionals are to alleviate or correct a medical condition. It will not disqualify from exemption supplies which these professionals use, solely because they have a preventative or hygienic purpose of the use. Furthermore, the Department recognizes that the dispensing of supplies of nominal value for self-treatment is a legitimate part of the treatment by the professional.

Therefore, toothbrushes, floss, and similar items of nominal value given by dentist and hygienists to patients during treatment are supplies used in treatment intended to

alleviate human suffering or to correct, in whole or in part, human physical disabilities and are not subject to the sales or use tax when purchased by dentists.

This ruling is issued solely to your society 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.