

[date]

[taxpayer address]

Re: Formal Ruling 17-03

Dear [taxpayer]:

This is a formal ruling for [taxpayer] regarding the applicability of sales and use tax to seven types of items used in your practice. This ruling is based upon representations in your letter dated [date], and the enclosed materials.

### **RULING**

Based upon the facts presented, all of the items you have listed qualify as medical equipment and supplies, exempt from Vermont sales and use tax.

### **FACTS**

You have asked whether Vermont sales and use tax applies to seven items you purchase for use in your medical practice: (1) endometrial pipelles, (2) radius loop electrodes, (3) ball electrodes, (4) patient return pad adapters, (5) Endosee hysteroscopes, (6) Endosee dx cannulae, and (7) standard bore 30-inch extension tubing. These items are used in medical examination and treatment of the uterus and cervix, as you describe further in your letter.

You describe Items 1, 2, 3, 6 and 7 as for medical diagnosis and treatment, not capable of repeated use, and having no non-medical application.

You describe Item 4 as a connector between a grounding pad and a generator, and used in electrosurgery treatment. You describe Item 5 as a hysteroscope, used in medical examination

and diagnosis. You state that these two items are capable of repeated use and have no known non-medical application.

## **DISCUSSION**

Vermont sales and use tax does not apply to purchases of “durable medical equipment . . . and supplies . . . used in diagnosis or treatment intended to alleviate human suffering . . . .” 32 V.S.A. §9741(2).

### **Durable medical equipment**

To qualify as exempt “durable medical equipment” the item must be “used in diagnosis or treatment,” and must also meet a statutory four-part test:

- (A) can withstand repeated use; and
- (B) is primarily and customarily used to serve a medical purpose;
- (C) generally is not useful to a person in the absence of illness or injury; and
- (D) is not worn on the body.

32 V.S.A. § 9701(30). “Durable medical equipment” is also defined in the statute to include “repair and replacement parts for such equipment.” Id.

Your Items 4 and 5, the patient return pad adapters and the Endosee hysteroscopes, qualify as exempt durable medical equipment because they are used in medical diagnosis or treatment and meet all four parts of the statutory test.

### **Medical supplies**

Exempt medical supplies, like durable medical equipment, are used in diagnosis or treatment, primarily serve a medical purpose, and are not generally useful to a person in the absence of illness or injury. Unlike durable medical equipment, they may be items worn on the body and must not be capable of repeated use. The regulations provide:

- F. Supplies used in treatment are exempt from the tax. The supply 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. Examples of supplies that are exempt include bandages and surgical dressings, hypodermic syringes and needles, disposable heating pads, and colostomy

devices. Examples of supplies not exempt from the tax are body massage appliances, therapeutic foot baths, room humidifiers and air conditioners, household baby and bathroom scales, athletic supporters, medic alert bracelets, and hot tubs.

Vermont Department of Taxes Regulations § 1.9741(2)F.

Your Items 1, 2, 3, 6 and 7, the endometrial pipelles, radius loop electrodes, ball electrodes, Endosee dx cannulae, and standard bore 30-inch extension tubing are used in diagnosis or treatment, primarily serve a medical purpose, are not normally used in the absence of illness or injury, and are not capable of repeated use. All therefore qualify as exempt medical supplies.

**GENERAL PROVISIONS**

*Issuance of this ruling is conditioned upon the understanding that neither the taxpayer nor a related taxpayer is currently under audit or involved in an administrative appeal or litigation concerning the subject matters of the ruling. This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations.*

*Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to see 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 statutes or regulations.*

*This ruling will be made public after deletion of the taxpayer's name and any information which may identify the taxpayer. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the taxpayer. The final discretion as to deletions rests with the Commissioner.*

*You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.*

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Emily Bergquist

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Date

Approved:

\_\_\_\_\_  
Kaj Samsom  
Commissioner of Taxes

\_\_\_\_\_  
Date