

[date]

[taxpayer address]

Re: Formal Ruling 17-05

Dear [taxpayer]:

This is a formal ruling for [taxpayer] (Company), regarding the applicability of sales and use tax to its sales of [product name]. This ruling is based upon representations in your letter dated [date], and the enclosed materials.

RULING

Based upon the facts presented, your product, [product name] qualifies as “food,” and is exempt from sales and use tax.

FACTS

Your Company sells [product name] containing a “proprietary blend” of various fruit and vegetable seed oils. These [products] are sold as a [food supplement]. Your product label contains a statement of “Supplement Facts,” listing the plant ingredients, the serving size, and the percentage of Daily Value for each nutritional ingredient.

DISCUSSION

Vermont’s sales and use tax does not apply to “food.” The statutory exemption reads as follows:

§ 9741. Sales not covered

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title:

* * *

(13) Sales of food and food ingredients sold for human consumption off the premises where sold

32 V.S.A § 9741(13).

The Vermont Department of Taxes Regulations (“Reg.”) defines “food” to include “dietary supplements”:

Food, food stamps, purchases made with food stamps, food products and beverages are exempt . . . Food, food products and beverages means food and food ingredients and includes substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food products specifically include soft drinks, candy and dietary supplements.

Reg. § 1.9741(13), Food and Beverages.

A “dietary supplement” is defined as:

(27) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) contains one or more of the following dietary ingredients:

- (i) a vitamin;
- (ii) a mineral;
- (iii) an herb or other botanical;
- (iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subdivisions (i) through (v) of this subdivision (27)(A);

(B) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) is required to be labeled as a dietary supplement, identifiable by the “supplemental facts” box found on the label and as required pursuant to 21 C.F.R. § 101.36.

32 V.S.A. § 9701(13).

The statute defines “dietary supplement” to include a “botanical” and an “extract” from a botanical. A “botanical” is “A drug or similar substance obtained from a plant or plants.” American Heritage College Dictionary, Third Ed., Houghton Mifflin Co, Boston (2000). Your product is composed of substances obtained from plants, and therefore qualifies as a “botanical” or an “extract” from a botanical. It is intended for human ingestion [deleted]. Under Federal

Regulation 21 C.F.R. § 101.36 (“Nutrition Labeling of Dietary Supplements”) it is required to be labeled as a dietary supplement. Therefore, your product qualifies as a “dietary supplement.”

Since your product qualifies as a dietary supplement, it qualifies as “food,” and is therefore exempt from Vermont sales and use tax.

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.

Emily Bergquist

Date

Approved:

Kaj Sansom
Commissioner of Taxes

Date