

[Date]

[Taxpayer]

[Address]

[Address]

[Address]

Re: Formal Ruling 14-

Dear [Taxpayer]:

This is a formal ruling for [Taxpayer], regarding the applicability of sales tax to your company's sales in Vermont of medical equipment and other products. This ruling is based upon representations in your letter of [date], and the materials you enclosed with your letter.

RULING

Based upon the facts presented, the walk-in bath tubs with lifts, the wheelchair lifts for transporting a person in a wheelchair up stairs, and the modular wheelchair ramps are exempt from sales tax. The walk-in tubs without lifts would be taxable. The tub's optional whirlpool feature would be taxable, whether it is purchased with a taxable tub or an exempt tub.

[Taxpayer] would be liable for collection of Vermont sales tax on its Vermont sales, because it will own and store its products in Vermont and will deliver some of its products in Vermont using its own representative.

FACTS

[Taxpayer] is a [non-Vermont]-based company which sells walk-in bath tubs with and without lifts, wheelchair lifts for transporting a person in a wheelchair up stairs, and modular ramps, which are permanently affixed wheelchair ramps. The walk-in tubs have an optional air-jet whirlpool feature.

All products are sold direct to retail consumers. Some items may be sold pursuant to a medical prescription, and some sales may be covered by Medicare or Medicaid.

Products will be delivered to a Vermont warehouse, and then delivered to the Vermont consumer by Taxpayer's representative or by common carrier.

Title will transfer in Vermont at the point of delivery to the consumer. All sales leads will be generated [outside Vermont].

DISCUSSION

Vermont imposes sales tax on retail sales of tangible personal property in Vermont. 32 V.S.A. § 9771. A retail sale includes "any transfer of title or possession or both." Department of Taxes Regulation (Reg.) § 1.9701(5)-1. Since Taxpayer's products will be delivered to its customers in Vermont, and since title will transfer at the point of delivery, Taxpayer's sales to Vermont consumers are subject to Vermont sales tax, unless an exemption applies. Reg. § 1.9701(8)-3.A.2.

A vendor making sales into Vermont may be required to collect Vermont sales tax if the vendor's activities have sufficient nexus with the State. The Due Process Clause requires that the activity have "some minimum link" to the State, while the Commerce Clause requires that the activity have "substantial nexus" with the State. 71 A.L.R.5th 671, *Sufficient nexus for state to require foreign entity to collect state's compensating, sales, or use tax—post—Complete Auto Transit cases*, I. § 2. Since [Taxpayer] will deliver its products to a Vermont warehouse and will deliver the products from that warehouse to its Vermont customers by Taxpayer's own representatives or by common carrier, [Taxpayer] will have sufficient nexus with the State to require that [Taxpayer] collect Vermont sales tax. *See, e.g., Lyon Metal Products, Inc. v. State Bd. of Equalization*, 58 Cal.App.4th 906, 913, 68 Cal.Rptr.2d 285, 288 (Cal.App. 1Dist., 1997) (In a drop shipment case, goods stored in a California warehouse and delivered from there to California consumers held to create "substantial nexus" required under the Commerce Clause.).

Vermont's sales tax does not apply to medical items "intended to alleviate human suffering or to correct, in whole or in part, human physical disabilities." 32 V.S.A. § 9741(2). Exempt items include "durable medical equipment" and "mobility enhancing equipment," which are defined as follows:

(30) Durable medical equipment: means equipment including repair and replacement parts for such equipment, but does not include "mobility-enhancing equipment," which:

- (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.

(34) Mobility-enhancing equipment: means equipment including repair and replacement parts of such equipment, but does not include "durable medical equipment," which

- (A) is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and
- (B) is not generally used by persons with normal mobility; and
- (C) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

32 V.S.A. § 9701 (30), (34). The regulations provide further definition:

D. Both "durable medical equipment" and "mobility-enhancing equipment" are exempt from the tax.

1. "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn on or in the body. 32 V.S.A. § 9701(30). "Repair and replacement parts" as used in this definition include all components or attachments used in conjunction with the durable medical equipment. Examples of exempt durable medical equipment include bath and shower chairs, commode chairs, dialysis treatment equipment, drug infusion devices, feeding pumps, hospital beds, MRIs, oxygen equipment, resuscitators, and x-ray machines. Furniture in a hospital or doctor's waiting room is not exempt because it does not serve a medical purpose and is not designed to be used in the treatment of human ailments or disabilities.

2. "Mobility-enhancing equipment" means equipment, including repair and replacement parts of such equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle, is not generally used by persons with normal mobility, and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. 32 V.S.A. § 9701(34).

Common examples of exempt mobility enhancing equipment include wheelchairs, stairlifts, canes, crutches, motorized carts, and walkers. No prescription is necessary for an item to be characterized as mobility enhancing equipment.

Reg. § 1.9741(2).D.1., 2.

[Taxpayer's] walk-in bath tubs with lifts, wheelchair lifts for transporting a person in a wheelchair up stairs, and modular wheelchair ramps would all be exempt as mobility enhancing equipment. *See also* Department of Taxes Formal Ruling 2009-07 (walk-in tubs with lifts exempt as durable medical equipment). As noted in the regulation, no prescription is needed for any of these items to qualify as exempt from sales tax.

Based on the limited information provided, [Taxpayer's] walk-in bath tubs without lifts do not appear to be "intended to alleviate human suffering" or "primarily and customarily used to provide or increase the ability to move from one place to another." It may be that they are more generally marketed and available to anyone with "normal mobility" and who does not suffer from illness or injury. Based on the information provided, the tubs without lifts would be taxable. You may send us any additional information which would be helpful in further determining the taxability of this item.

The optional tub whirlpool feature would be taxable, even if the tub being purchased is an exempt tub with lifts, because the whirlpool feature is "useful to a person in the absence of illness or injury" and does not "provide or increase the ability to move from one place to another." For comparison, the medical exemption which covers "supplies" does not exempt

“body massage appliances, therapeutic foot baths . . . and hot tubs.” Reg. § 1.9741(2)F. The optional whirlpool feature is similar to the taxable therapeutic foot baths and other items which are not exempt as medical supplies.

GENERAL PROVISIONS

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 deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

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 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 statutes or regulations.

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

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date