1375 Sherman Street
Denver, Colorado 80203

GIL-2008-21

August 26, 2008

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Re: sales tax re: supplements, etc.

Dear XXXXXXXXXX,

I am responding to your letter the department received July 24, 2008. You are interested in the applicability of sales tax to certain items. The department recently enacted a regulation governing requests for tax advice. We issue both private letter rulings and general information letters. See, §24-35-103.5, C.R.S. and Department regulation (24)-35-103.5. Private letter rulings are issued in response to tax questions addressed to specific factual settings and are binding on the department. General information letters are issued in response to general tax questions and are not binding on the department. I am treating your request as a request for a general information letter. However, if you require more specific guidance than is offered in this letter, you would need to submit a request for a private letter ruling, along with additional necessary details.

Issues
You ask whether sales tax applies to the following items:

1. Supplements
2. Tens Units
3. Pads

Discussion
Your letter does not disclose the specific supplements at issue. In general, dietary supplements are subject to sales and use tax because they are tangible personal property. See, §39-26-104(1)(a), C.R.S. (sales tax applies to the sale of tangible personal property). Debate surrounding supplements generally focuses on whether they qualify, if at all, either as exempt “food” products or as exempt medicine. See, Department Regulation (39)-26-102.4.5(b)(8) and (9). For example, vitamins and minerals are supplements and not exempt food products.

You do not define "Tens Units," but I assume you are referring to transcutaneous electrical nerve stimulation units. The department understands these units are used as massagers and electronically induced muscle exercisers. Retailers market these devices either as a beauty aid or for medical treatment, or both. In general, therapeutic devices specifically designed to treat a human physical disability or surgically created abnormality are exempt. See, §39-26-717, C.R.S. However, devices that have therapeutic affect, but are not specifically designed for such purpose, are not exempt. For example, hot tubs, whirlpools, and exercise equipment are not exempt, even though they may have therapeutic value. This is because they are not specifically designed for treatment of physical disability or to correct a surgically created abnormality. See, Department FYI Sales 68.

It is not clear what "pads" means and, therefore, I cannot offer any general guidance.

The department offers retailers an abundance of sales tax related resources. These are easily accessed through our web site at: www.revenue.state.co.us. Click on "Taxation" > "Publication / Resources" and then select FYIs, Regulations, or Tax Information Index.

Finally, and pursuant to state law, the Department will make public a redacted version of this letter. Your letter requesting this informational letter is not made public. See, §24-35-103.5(13), C.R.S. The regulation governing private letter rulings and informational letters is available on our web site at: http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments or concerns about the redacted letter.

I hope this is helpful. Please feel free to contact me if you have any questions.

Sincerely,

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