


ST 2395 - SALES TAX : MEDICATED CONFECTIONERY

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TAXATION RULING NO. ST 2395

SALES TAX : MEDICATED CONFECTIONERY

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1010644	DRUGS AND MEDICINES MEDICATED CONFECTIONERY	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT: ITEM 23 AND ITEM 38 FIRST SCHEDULE; ITEM 4, THIRD SCHEDULE

PREAMBLE 1. Item 23 in the First Schedule to the Sales Tax (Exemptions and Classifications) Act exempts from sales tax goods of a kind sold exclusively or principally, or put up for sale, as food for human consumption. Paragraph (d) of that Item excludes from exemption confectionery or goods of a kind marketed exclusively or principally as ingredients of confectionery.

2. Item 38 in the First Schedule exempts from sales tax drugs and medicines used in the prevention, cure or treatment of sickness or disease in human beings but not including medicated confectionery.

3. Item 4 in the Third Schedule operates to tax at 10% goods that would be covered by item 23, First Schedule, but for the operation of paragraph (d) of that item.

4. The combined effect of the three provisions is that medicated confectionery is taxable at 10%.

5. This Ruling considers whether various products are exempt from sales tax under item 38, First Schedule as drugs and medicines or whether they are medicated confectionery and taxable at 10% as confectionery under item 4, Third Schedule.

RULING 6. To come within the exemption under item 38 a product must first meet the description of a drug or medicine. Secondly, it must not be excluded as medicated confectionery.

7. The products in question are variously described as 'throat lozenges', 'throat drops', 'cough lozenges' or 'cough drops'. They are marketed for the purposes of relieving coughs and throat irritations. Ingredients include those found in ordinary confectionery but, in addition, almost all products include menthol and eucalyptus. The products are generally pleasant tasting.

8. The majority of products in the form of lozenges, pastilles, jubes, drops and tablets ordinarily would contain sufficient quantities of sugar, glucose, gum and other confectionery

ingredients to be regarded as medicated confectionery. However, to follow such a strict approach would deny exemption to products such as lozenges that are regularly prescribed by doctors for the treatment of throat irritations.

9. Accordingly, it has been decided that throat lozenges and other similar products will be accepted as exempt under item 38 as drugs and medicines and not excluded as medicated confectionery if they:-

- (a) make claims on labels and/or containers that the goods are for the treatment of sickness or disease, e.g. coughs and sore throats. Claims such as 'for the soothing relief of coughs and minor throat irritations' and 'for the soothing relief of minor throat irritations' are accepted as medicinal claims. On the other hand, claims such as 'Butter soothes the throat', 'Strong soothing action' and 'Gentle soothing action' are not accepted as claims of a medicinal nature;
- (b) indicate dosage requirements on the labels and/or containers;
- (c) are registered with an appropriate health authority;
- (d) are not described on labels or any other packaging, including outer containers, as confectionery;
- (e) are packaged in a way comparable to other medicinal lines, e.g. blister pack or individually sealed, and not packaged in a similar fashion to confectionery; and
- (f) contain an active ingredient not ordinarily found in medicated confectionery e.g. an antibacterial. Camphor, eucalyptus and menthol are not accepted as antibacterials as they are ingredients ordinarily found in medicated confectionery.

10. Products that do not satisfy the above criteria are taxable at 10% as confectionery under item 4, Third Schedule.

COMMISSIONER OF TAXATION
24 March 1988